FEB 9 1

Ecclesiastes

Wm J Kolling Jr

PO Box 2301 · Tel EL9-1674 334 E 9th East

Salt Lake

FEB 15 1968 Looked it over - Thurs. 2.20 pm

HIGHER ACCOUNTANCY

Principles and Practice

The texts listed on this page form the basic material for the LaSalle Higher Accountancy Course and Service. They are designed to meet the demand for efficient training in the more advanced branches of accountancy, preparatory to public or private practice or to passing the Certified Public Accountant examination as given by the several states.

Titles	*Authors*
ELEMENTS OF ACCOUNTING	H. T. Scovill, A.B., C.P.A. Professor of Accountancy, *University of Illinois*
PRINCIPLES OF ACCOUNTING	
FACTORY ACCOUNTING .	Frank E. Webner, C.P.A. *Consulting Cost Accountant*
AUDITING PROCEDURE .	William B. Castenholz, A.M., C.P.A. *LaSalle Extension University*
BUSINESS LAW	Samuel D. Hirschl, S.B., J.D. *Late Member of the Illinois Bar*
ORGANIZING A BUSINESS .	Maurice H. Robinson, Ph.D. *University of Illinois*

LASALLE EXTENSION UNIVERSITY

ORGANIZING A BUSINESS

MAURICE H. ROBINSON, Ph. D.
Professor of Industry and Transportation, University of Illinois; Former Special Agent of the Census Bureau. Author of *A History of Taxation in New Hampshire*, etc.

La Salle Extension University
• Chicago •
1919

CONTENTS

ORGANIZING A BUSINESS

CHAPTER I

BUSINESS ORGANIZATION

The Nature of Organization

Organization consists in arranging parts each having special functions to discharge so that their orderly, harmonious, and efficient direction is made possible. This term is, it will be noticed, a very broad and comprehensive one. It applies with equal facility to the organic life of animals, of individuals, and of groups of individuals.

Thus the race horse is a highly organized combination of chemical constituents whose general purpose is to secure both grace and speed. Similarly each individual man is an organized entity endowed with grace, action, and energy, and having in addition the ability to imagine, to remember, to construct, and to direct. A coach and four, filled with a number of passengers acting under the impulse of a common idea, and guided by the accurate eye and the steady hand of the driver, is an organization of a complex type. A club of men united by common social bonds and under the management of its officers is a more complex organization operating for social purposes.

The city is a more or less completely organized political unit which fulfills its functions well only when its organization is harmoniously developed. The nation is a still more complex type of political organization.

The British Empire, for example, with its centralized government at home and its dependencies of various kinds and sizes beyond the seas, represents the most complex type of political organization that has been developed in the world's history.

The bank, the factory, the wholesale house, the retail store—each is a business organization of a simple type. The clearing house, the board of trade, the national manufacturers' associations, the railway freight associations, the commercial combination, the trust, the holding corporation— all are business organizations of a more complex character.

All organizations are formed and conducted for the good of the various constituent members. In the case of a business organization the object is the creation of wealth for the common good, which is afterwards distributed among the several members of the organization. If more wealth can be created by an organization than can be created by the members working individually, the organization fulfills a worthy economic purpose. Whether the wealth thus created is distributed fairly among the members depends largely upon the character of the organization and the facility with which the several types of organizations can be formed.

It is thus of the utmost importance to the social welfare of individuals that the governments under whose authority business organizations are formed place no unnecessary barriers in the path of those who are instrumental in determining the form which the industrial organization assumes. The evolutionary forces working with peculiar force and efficiency in the business world will, in an upright and intelligent business constituency, insure the dominance and perpetuity of the most efficient and the most equitable types of business organizations.

The Relation of Organization to Management

Management may be defined in a general way as "the art of conducting an organized body with a given purpose in view for the sake of accomplishing some predetermined end." Business management is therefore the art of directing a business organization to secure definite business results. Organization is preliminary to management; it is, however, a necessary stage in business development. Moreover, efficient management is largely contingent upon the character of the organization. For example, using an illustration from the first paragraph of this chapter, the horses, the coach, and the passengers must be in harmonious relations to each other to permit efficient management. A large coach, many passengers, and a pair of ponies would effectively prevent good management. On the other hand, many horses, a small coach, and many passengers would be equally unmanageable.

So in the business world the organization should be adapted to the work to be performed, and all parts of the organization should be in harmonious relationship. Such a condition, while favorable to good and wise management, does not always insure such a desirable end. The latter comes only as a result of knowledge of the organization and the object sought, together with experience in this portion of the field of business enterprise.

Management is, therefore, first a question of organization, and then of the skill and ability of the manager. The more complex the organization, the more difficult the task of the manager becomes. On the other hand, organizations ought to be as complex as the nature of the work undertaken demands. It is always unwise to attempt to make business problems less difficult by sim-

plifying the organization when the nature of the work undertaken is complex in itself. It is far better to find an able board of managers, one that understands the principles involved and is able to make broad and comprehensive plans.

To secure good and efficient management is at once a most difficult and a most desirable task in our business activity. Given an opportunity, that is, conditions where new wealth may be created by business activity, poor management is almost sure to result in business disaster, while good management is almost equally sure to result in business success.

Factors of Wealth Production

In the organization and operation of every business enterprise the co-operation of four separate and different kinds of economic elements, commonly called the factors of production, are necessary. These four factors are (1) land, (2) labor, (3) capital, and (4) the enterpriser. The first and third are non-human and ordinarily are unable to produce articles of wealth except with the aid of and under the direction of business enterprise. The second and fourth constitute the human element but are separated into two classes, the former supplying the labor force and the latter directing the conduct of business enterprise. As each of these factors is necessary in business activity, it is desirable to explain the nature of each and the special function it performs in business affairs.

LAND

Land includes not merely the surface of the earth, together with the oceans, lakes, and rivers, but all the materials below the surface of the land and under the seas. It also includes the forces of nature, the work of

rivers, wind, and tides, the effect of climatic conditions, rainfall, heat and cold, winds and storms—in fact, all of the things which nature has furnished for mankind to work with.

The elements furnished by nature are in a way indestructible; in the work of producing wealth, however, while the elements are not destroyed, they are changed in form in such a way that in many cases they do not become usable a second time. Consequently such resources become more or less rapidly exhausted in the process of wealth production, and in order to secure the greatest possible benefits it is necessary to conserve such resources with the greatest possible care. Moreover it is also desirable to use the land and the natural resources for the purposes to which they are best adapted. It would be undesirable, for instance, to use land adapted to the cultivation of corn for the production of fruits, or land peculiarly fitted for manufacturing purposes for residences and recreation grounds.

Again, certain kinds of manufacturing require special climatic conditions. For example, the manufacture of cotton goods needs a moist climate while the manufacture of flour is more economically conducted in a dry climate. Thus the adaptability of the land and the climatic conditions to particular kinds of manufacturing, of farming, or of commerce plays an important part in connection with the production of wealth. Further, in the manufacture of goods power in some form is generally found necessary; hence we find that in the early part of the last century manufacturing establishments were located on rivers, at points where water power could be utilized, and that in more recent times the iron and steel business is located at points in close proximity to deposits of coal and natural gas.

The land as a factor of production thus not only furnishes the raw materials with which the other three factors co-operate in furnishing useful goods, but, what is of large importance in determining the character of business organizations, the location of those materials, the topography, the climate, and the availability of natural power, such as rivers, gas, oil, and coal, are the determining forces in the location of trade centers, manufacturing sites, and the dwelling places of mankind.

It has been found that temperature also is an extremely important element in connection with the production of wealth. The temperate climate seems to be best adapted to the development of energy and enterprise; consequently those countries situated within the temperate climate have generally developed more rapidly and have been able to use the resources of nature with greater efficiency.

LABOR

A second element in production is man himself. It is man's labor and man's productive genius that have made use of the materials furnished by nature and converted them into the utilities which satisfy his wants. Men differ, however, both in their ability to deal with the materials furnished by nature and in the use which they are able to make of such materials when converted into suitable form for human use. The labor power of any community varies in accordance with the knowledge of the individual men and with the ability of the individual men in their associated capacity to make use of the gifts of nature. The primitive races are largely the slaves of nature and of natural forces. As a result of the growing intelligence of mankind in relation to business enterprise, greater and greater control over nature and nat-

ural forces is attained. From the economic standpoint, the progress of civilization has been aptly described as a process by which man has been transformed from the servant of nature to the master of natural forces. This result is attained partly through his ability to create wealth faster than he consumes it, thus enabling him to use the portion that he has saved to assist him in the creation of additional wealth. Natural resources thus transformed and stored by man are called "capital."

CAPITAL

The formation of capital is thus one of the fundamental conditions of economic progress. In the first stages of civilization, progress consisted chiefly in the invention and use of tools and weapons of defense. The tools were used to assist man in the subjugation of nature and the weapons were used to protect himself against the constant warfare to which he was subjected by hostile races and against the dangerous animals and reptiles. The tools gradually assumed more and more usable forms and with each stage in the evolution, he became better able to create and save additional capital to assist his efforts in providing for his increasing wants and adding to his stock of capital. He was thus enabled to provide himself with shelter and with clothing, and consequently he became better able to withstand the hardships of unfavorable climatic conditions and to migrate from the warmer climates to those where formerly he was unable to live at all.

With the creation of a stock of capital, there came to be a marked difference between those races which were able to make use of capital in connection with the natural resources and those less efficient in this respect. Those that were able to make the best use of such facili-

ties became masters over the others in the various tribal warfares that occurred, and the general qualities that had enabled such races to make and save capital also enabled them to preserve their supremacy by making use of the conquered races for various purposes connected with their economic life.

THE ENTERPRISER

It is the function of the enterpriser, or business manager, to direct capital, labor, and the natural resources into their proper channels; to unite the three in proper proportions to secure the greatest economic results; and under certain methods of business organization, to assume the risks connected with the conduct of business establishments and to take the profits that arise as the result of such operations.

Business Units

A combination of land, labor, and capital organized into a working union, under the direction of a man or a group of men, for the purpose of creating utilities, that is, to add to the store of useful things, constitutes a business unit. Business units differ in size, in complexity, in permanence, and in the character of the work which they undertake. For example, the shoemaker's shop is a business unit. It occupies and uses a portion of the land; one or more laborers are more or less regularly at work; and it uses capital in the form of a building, tools, lasts, leather, and shoemaker's findings. Finally, one or more men, usually one, direct the activities of the establishment for the purpose of making and repairing boots and shoes.

The grocery store is an example of a business unit of a somewhat more elaborate type. The grocery

store uses land, capital, and labor and requires management. The capital assumes a somewhat different form from that found in the shoe shop, but it is still capital. It is made up of a stock of groceries, continually changing in kind and quantity, a store building, fixtures, horses, and delivery wagons. A grocery store usually requires the work of more laborers than a shoe shop and labor of a different kind. Some labor, however, is indispensable in either case. Furthermore, the grocery store, like the shoe shop, needs intelligent management. This management may be in the hands of one man, or under two or more men working together as one. Without such management the stock of goods will grow stale, the capital will be destroyed, and the labor will be misdirected.

The United States Steel Corporation is an example of a business unit of an exceedingly complex character. Unlike the shoe shop and the grocery store, the steel corporation is itself made up of subordinate or constituent parts which, from their character, we may call "operating units." These operating units are united into a single business unit by means of the holding-corporation method of uniting economic interests. This will be more fully described in a later section. These operating units are each composed of land, capital, and labor. In this respect they are identical with the small business units already described. In one important characteristic they differ, however, and that is in respect to the management. The operating units of which the steel corporation is composed are each controlled and directed from the central office; that is, they are not self-directing, but subject to the orders of general administrative officers of the steel corporation.

Unity of management is, then, a peculiar characteristic of a business unit.

Thus a business unit may be identical with an operating unit, or composed of several such organizations. Moreover, when business units are made up of several formerly independent business units, the union may be either partial or complete, temporary or permanent. When the control is divided between the subordinate units and the central organization, the union is a partial one; the rights of the central management are limited by the terms of the union, and in all other respects the formerly independent business unit is free to act for itself.

This form of business organization may be likened to the federal union of governments similar to that of the United States and the several states of which the central government is composed. The several subordinate operating business units are in the process of becoming completely merged with the central organization, and if the process is carried to its logical conclusion, the organization, from a business point of view, will in the course of time be completely unified. Where the control is entirely in the hands of a single management, the union is a complete one. In this case the operating units have no rights of their own, but are strictly subject to orders from the central administrative offices. Such a business organization may be compared to a completely unified central government where the legal political organizations, such as the cities, counties, and townships, have no rights of their own, but are entirely subject to the control of the state legislature and the state administration.

Where a business unit is made up of operating units, the union may be formed for a period of years or it may be a permanent organization. In cases where the union

is not complete, it is quite usual for a temporary union to be formed. Such unions are illustrated by the combinations which were very common in the United States during the seventies and early eighties, and have been for the last quarter of a century a characteristic feature of German industrial organization. Where the union is at all complete, the organization is more likely to become a permanent one. The advantages of complete and permanent organizations are so great that the tendency is strongly towards this type of business organization. A good illustration of this type is the American Sugar Refining Company as organized in 1894 after the dissolution of the first sugar trust. It is better illustrated by the International Harvester Company, which is made up of a number of formerly independent factories, all of which are now completely unified, from the standpoint of business organization and business management, into one great company.

Methods of Conducting Business

Considered from the standpoint of economic reward, there are two important methods of conducting business enterprises. The first class comprises those groups in which all the individuals interested in the business enterprise share in the income. The second class consists of those groups where a selected few control the operations; they pay a stipulated amount for the use of the land, capital, and labor employed; they assume all or the major portion of the risk of failure and receive correspondingly all or a major portion of the profits arising from the operations.

COMMUNISM

The most comprehensive type of organization of the first class is the communistic society. Under this form

of organization there is only one business unit for the whole economic society. In its ideal form this society is identical in its organization and scope of activity with the political organization known as a state. Under present conditions, however, the communistic societies existing today are small organizations forming one of the many business units of which the state is composed.

Communism differs from other types of economic society in two important respects: (1) The land and the capital belong to the entire community; (2) all goods ready for consumption are held in the name of the community and distributed by the central management to the various members on a substantially equal basis. The work of production, moreover, is directly under the control of the same all-powerful board of directors, subject only to the duly enacted constitution and the by-laws of the society. The directors are elected by popular vote at stated intervals and possess during their term of office the entire political power as well as the right of business management. To this board belongs the task of assigning to each member of the organization his work and of supervising its execution.

The communistic society, therefore, must be completely and harmoniously organized, as well as skilfully managed, or the individual members will fail to perform the various tasks efficiently and the society will fail for want of the necessities of life. Partly owing to the natural selfishness of mankind and partly to the difficulty of organizing and managing societies of so complex a character, few communistic organizations have achieved success. Unless held together by some dominant religious motive, they usually have experienced a stormy existence and a short life.

SOCIALISM

A more promising form of social organization is known as socialism, or the socialistic society. Socialists differ from communists in several important respects. While the communists make all property common, the socialists not only permit but encourage individual ownership of goods ready for consumption. To use the words of Professor Ely:[1]

> Socialists seek the establishment of industrial democracy through the instrumentality of the state. Our political organization is to become also an economic industrial organization. Socialism contemplates an expansion of the business functions of the Government until the more important businesses are absorbed. Private property in profit-producing capital and rent-producing land is to be abolished. Socialists make no war upon capital; what they object to is the private capitalist. They desire to socialize capital and to abolish capitalists as a distinct class. Their ideal, then, is not, as is supposed by the uninformed, an equal division of existing wealth, but a change in the fundamental conditions governing the acquisition of incomes.

Socialistic organization, then, expands the economic functions of the state so far as seems necessary in order to abolish private property in land and the tools of production. In all other cases the individual or groups of individuals voluntarily engage in the usual economic activities. The socialistic organization is coincident with that of the state so far as its functions extend. Like the communistic organization, it must be well organized and well managed or disaster and failure inevitably follow.

Side by side with the socialistic organization and within the political organization, there exist voluntary organizations of individuals for the purpose of undertaking economic functions not under the control of the

[1] *Outlines of Economics*, page 515.

socialistic state. Such voluntary organizations work for themselves exactly as most men work under present conditions. There is, therefore, competition existing between the socialistic state, carrying on the work of production, and the voluntary organizations of individuals, undertaking all other economic activities. Unless the socialistic state is able to work with as great efficiency as those engaged in private enterprise, socialism proves a failure and is likely to be abandoned even by its own adherents. Like communism, the economic success of the socialistic state depends more upon organization and administration and less upon the individual ability than the present methods of conducting business affairs.

CO-OPERATION

A less pronounced type of social organization, and one that is under present conditions considered even more practical, is the co-operative society. Such organizations depend upon the voluntary co-operation of the parties and therefore must be successful from the economic point of view in order to be permanent. Like the communistic and socialistic societies, co-operative organizations are managed by an elected board. They maintain, for purposes of operation, an administrative organization similar to that which exists in the ordinary business enterprise. The important characteristic of this form, and one that distinguishes it from the usual type of business organization, is this: The services of land, capital, and the managers are paid for out of the gross income of the organization, and the laborers share the remaining profit in accordance with the plan arranged by the constitution of the society.

The co-operative enterprise succeeds, provided (1) that the board of directors is sufficiently far-sighted to employ

able administrators; and (2) that the laborers, being in ultimate control, submit to discipline and work as efficiently under their own organization as they do under a capitalistic organization at the regular wage scale.

Co-operative societies are formed to engage in production and to assist their members in purchasing goods and services for their individual consumption. The first class has had very little success, although there are a few notable exceptions, for example, the Coopers' Co-operative Societies of Minneapolis. As a rule, co-operation in production has been successful only when the work is simple in character and where the goods manufactured are easily sold. Co-operation as an aid in purchasing goods and services has been much more successful from the economic standpoint, and therefore such organizations exist in considerable numbers in many different countries. This results partly from the fact that the profits can be more fairly distributed, partly because the risks are less, and partly because the problems of management are less difficult to solve. Co-operation of this kind has been peculiarly successful in providing life insurance.

THE CAPITALISTIC SYSTEM

The several classes of business enterprise described above stand in marked contrast with the second type of business organizations. Under the influence of competition, a managerial class, technically known as "entrepreneurs," has been developed, whose special function it is to organize and direct business units and to take the profits arising from their operation. Under normal conditions, the managers own a part of the land and capital and employ or contract for the use of such additional land and capital as they find it profitable to employ. They further contract for labor of the proper kind and

quantity to operate the plant. They sell the entire product on the open market, pay all the expenses, and assume the risks in connection with production, due either to misdirected effort or to destructive forces of nature. If the character and location of the business are well chosen and if the business is well organized and ably managed, the profits arising from such favorable conditions are the reward of successful management and go to the managerial class.

Under somewhat extreme conditions of individualism the manager is a single person, directing the establishment himself, assuming all the risks, and receiving all the profits. This was the usual condition of industrial organization in the early stages of industrial development, when operations were simple and the capital required was small. With the invention of machinery and the establishment of the factory system on a large scale, the character of manufacturing demanded more capital and more varied talents on the part of the manager. Hence followed the development of associations of individuals for the purpose of conducting and controlling business enterprises and the division of labor within the managerial group. For example, in a partnership manufacturing business, one of the partners may act as treasurer, supervising the accounts, while the other partner has charge of the factory and the men there employed.

In larger organizations the division of labor and of function is more marked. In fact only a few of the men who really undertake the risk of the enterprise have ordinarily any direct control over the financial or manufacturing operations of the company. They elect a board of directors, which takes direct charge of the management, rendering an account of its work at the annual meeting. It is difficult, not to say impossible, for the

average stockholder to understand the accounts or to determine from them whether or not the business has been honestly and efficiently managed. Furthermore, the directors in most cases employ men as superintendents and managers, as treasurers and accountants, who may not be members of the company at all, and thus the direct economic relationship originally existing between the manager and his reward is partially and sometimes completely destroyed.

Since organizations of this character are economically desirable to furnish capital to undertake the operation of the more important enterprises, all citizens are more or less directly interested in their honest and efficient administration. Therefore the state, representing the common good, has in recent years, by acts of the legislature and by judicial decisions, regulated to a considerable extent the internal affairs of all forms of voluntary business associations which operate on a large scale.

Industrial Groups

Business organizations need to be adapted to the nature of the work which they are to undertake. Work which is simple in its nature, requiring small plants and few men, is best conducted by a simple organization. Work of a more complex character, demanding large plants and a large labor force, needs a more complex organization. Since the character of the plant is largely conditioned by the character of the work which is undertaken, it is desirable to classify the various industries into groups, each of which is devoted to operations similar in character and requiring similar organizations. From this point of view industries may be classified into extractive, manufacturing, commercial, and transportation industries.

EXTRACTIVE INDUSTRIES

The extractive industries include farming, fishing, lumbering, and mining. In the first three of the industries the business units are small and are generally best administered by the individual proprietor or a partnership. In the case of mining, however, the condition is somewhat different. Mining as carried on at the present time requires a large investment of capital and elaborate machinery. Consequently the mining industry generally demands a business organization of a somewhat elaborate order, and in this respect differs widely from the other extractive industries.

MANUFACTURING

Manufacturing, as the word signifies, means "made by hand." In earlier stages practically all manufactured goods were thus made. Manufacturing was then in what is known as the handicraft stage; consequently at that time it was operated generally by small and simple organizations. Later it became a machine industry, demanding a large investment of capital in tools and machinery, and the organization has accordingly been adapted to the new conditions.

In the second place, goods are made either to order or for the general market. For example, men's clothing is made either in the small shop of the custom tailor, permitting of a simple business organization, or in the large factory, catering to the general market, in which case the organization becomes sufficiently complex to take care of the varied activities of this method of manufacture.

In the third place, manufacturing plants may undertake only one stage in the process or it may undertake all of the stages. For example, a business establishment

may manufacture Bessemer steel billets only or it may mine the ore, convert the ore into pig iron, and then into steel billets, then into beams, and finally into bridges. It may even go so far as to erect the bridges ready for traffic. In such cases the organization should be correspondingly complex in order to permit of efficient direction and management.

COMMERCE

The specific work of commerce consists in transferring titles to various kinds of private property. Usually, however, storage of goods connected with the trade is conducted in connection with the direct work of commerce. The work of commerce is to take the goods from those who have a surplus and transfer them to those who have a deficiency. Commerce may be either local, national, or international in scope. Commerce of a local nature is ordinarily simple in character and needs only simple business organization. National and international commerce are more complex and require more complex organizations.

TRANSPORTATION

Commerce transfers titles; transportation distributes the goods. Transportation is conducted by a variety of agencies and instrumentalities. In its simplest form it is conducted by pack animals, by wagons and drays, and by boats and sailing vessels; in its more complex form, by steam cars, by steam boats, by electric traction, by pneumatic tubes, and by pipe lines for the transportation of oil and other fluid products. In its modern development, transportation, as illustrated by the modern railway, is the most complex of all business enterprises and consequently demands the most comprehensive and highly developed business organization.

Political Conditions and Business Organization

The character of the government directly affects business organization and management in several important particulars.

In the first place, some governments undertake many kinds of business enterprises, and all governments enter into business to a limited extent. For example, practically all governments collect, transport, and deliver mail. Many governments operate telegraph and telephone systems, street cars, waterworks, and gas plants, and furnish electricity for lighting purposes. A few governments furnish markets and undertake the business of carrying freight, passengers, and express. In some cases governments prohibit the regular business organizations from entering into the business industries which they operate. In other cases governments compete with private organizations doing the same kind of business.

In the second place, all governments authorize particular forms of organization and make specific regulations in regard to their operation, and protect such organizations as they authorize so far as they conform to the law. Thus the partnership and the corporation are universally authorized by every modern government. Furthermore, merchants' and manufacturers' associations, stock exchanges, labor unions, and other organizations formed for the purpose of facilitating business activity, are permitted and protected by law. In cases where particular forms of business organizations are definitely authorized, the authority thus conferred is always strictly limited by the terms of the act. In other cases, where business organizations are voluntarily formed but not definitely authorized by a particular legislative act, the authority of such organizations, their internal relations, and the scope

of their activities are determined in each case by the courts as the case seems to demand.

In the third place, practically all modern governments undertake, through legislation, the courts, and the administration, to protect property rights of all business organizations that are legitimately formed. In this country the federal government and most of the individual states protect such property rights by clauses in the fundamental constitutions as well as in the statute law. Moreover, certain organizations are permitted, in the interests of the public welfare, to take private property under the right of eminent domain for their own use, paying the owners of the property proper compensation, whenever in the judgment of the courts such transfer of property rights is in the interests of the public service.

In the fourth place, all governments protect the contracts which are entered into by business organizations. Whenever agreements between such organizations are, for any reason, not enforced through some responsible government, they are almost invariably broken, whenever it is for the individual interest of either party to do so. Whenever the agreements entered into by business organizations are deemed contrary to public policy, the parties to such agreements are subjected to either civil or criminal penalties or to both.

In the fifth place, most governments regard the competitive system as fundamental in the present economic life and therefore attempt in many important ways to protect and perpetuate it. Any organizations, therefore, that plainly and deliberately attempt monopolies in an industry are ordinarily subjected to punishment, and in certain cases the governments take extreme measures and order their dissolution. This policy results in preventing the formation of certain kinds of organizations in

some cases, in breaking up larger organizations into smaller ones in other cases, and in still others in entirely changing the form of organization generally adopted for carrying on business enterprises.

An excellent example of this is found in the attitude of the United States Government and the German Government toward that form of organization known as the "combination" in this country and the "cartel" in Germany. In the United States, combinations have always been held void and in most cases illegal. In Germany, on the other hand, such organizations have been approved and the agreements under which they are formed are enforceable at law. Consequently our American industrial leaders early abandoned the combination and adopted the trust form, and later the corporate form, of organization in its place, while the Germans have, under substantially similar industrial conditions, continued to administer the common relations of their large business enterprises through the cartel method.

In the sixth place, in some cases governments go so far as to regulate the character of the service which business organizations formed within their domains render to their customers. In some cases this regulation is in the interest of those who purchase the goods; in others, of those who are engaged in the service. Examples of the first method are found in the pure food law recently enacted by the United States Congress and in laws of a similar character, enacted in several of the states, to regulate the quality of gas and water furnished by private organizations. Examples of the second method are found in the federal legislation requiring all interstate railways to equip their trains with safety couplers and in the state laws requiring buildings to be erected in conformity to

the building regulations made for the purpose of preventing conflagrations.

In the seventh place, most modern governments regulate the price which business organizations may charge for certain kinds of industrial service. The most important industry in which this policy is generally followed is that of transportation. It is also quite generally applied throughout the domain known as the "public service field." Originally it was thought that competition between rival railway systems would insure fair and stable railway rates. As a result of experience, it has been found that railway competition results in fluctuating rates and discrimination between places and individual organizations, and generally in the final consolidation of the competing lines. To remedy the evils growing out of such conditions, some governments have purchased and operate the entire railway systems within their domains; others have authorized some public authority, usually a commission, to adjust the rates for the purpose of securing fairly equitable conditions between competing railways and between the railways and those who make use of their services. The character of the policy of various governments with respect to business organizations thus plays an exceedingly important role at the present time and one of growing importance as the complexity of industrial conditions increases.

Social and Industrial Conditions Affecting Business

Not less important than the political conditions are the social customs and moral ideals of the business world. As already noticed, in organized industry each individual receives his own economic reward as a result of the division of a common fund. With simple organizations it is possible for the parties interested to take part directly

in the division of the spoils. In most cases, however, the share of each participant is to a considerable extent dependent upon the good faith of those chosen to make the distribution. While governments may punish those who act fraudulently and may attempt in all possible ways to insure an equitable allotment of the common store, still, generally, the parties to a comprehensive business organization must rely on the good faith and common honesty of those whom they choose to manage the enterprise. This is the reason why the corporation cannot flourish except in communities where the standard of business morals is fairly high and why profit-sharing co-operative organizations have usually failed. It is true, of course, that the introduction of accounting systems and the extension of the police activity of the state may make possible business organizations of considerable complexity, even where the morals are low. Such conditions, however, add immensely to the cost of conducting business and to the expenses of the government. Ordinarily, therefore, the simpler types of business organizations persist until the moral tone of the business community is fairly high.

The development of the higher types of business organization is for many reasons extremely slow. The corporation, for example, existed in its principal features among the Romans, two thousand years ago, but yet it is only within the last twenty-five years that this form of organization has become a dominant factor in modern business enterprise, and that only in the more progressive countries. In this respect the city stands in marked contrast to the country. This is because it is customary for the city dweller to associate in various ways with his neighbors. On the contrary, the countryman is, by force of circumstances, in the habit of working and living alone. To be sure, he undertakes certain co-operative enterprises

in connection with his neighbors, but in his ordinary business relations he acts purely in his own capacity as an individual. For this reason it is difficult to form corporations for the purpose of carrying on, for instance, creameries among the dairy farmers. On this account stockbrokers do not look among the farmers for their regular customers, although as a matter of fact the farmers are becoming an important class of investors. With their surplus gains they buy land and make their investments where they can personally overlook the property which they own and directly superintend its management. Associated business enterprise has not become a habit or custom with them. They are accustomed to associate for political purposes, but not for business enterprise.

The development of the co-operative spirit necessary in the modern business organization and management is the outgrowth of experience and is founded upon mutual confidence and reciprocal good faith. Since the earliest times, men have been accustomed to co-operate for the purpose of undertaking physical tasks beyond the strength of one man. For example, in colonial days, and even within the memory of the present generation, substantial frame houses and barns were erected at a raising, in which all the active young men of the neighborhood joined. Another familiar method of co-operating is known as changing work, characteristic of New England farm life in earlier days and still common in every farming community. In such cases the relation existing between the service rendered and the compensation is easily calculated by the participants.

With the complete development of the principle of specialization of work and of the economic system known as "money exchange," the character of co-operation has almost entirely changed. Men co-operate at the present

time chiefly in furnishing capital to equip and operate factories, stores, and railways. Capitalists and laborers co-operate, each furnishing the necessary element in the work of production and each receiving his compensation out of the common product. Under these circumstances, the relation between the work done and its just reward, so obvious in physical co-operation, is always difficult and sometimes impossible to ascertain. Consequently men hestitate to enter into organizations of this character, preferring to work alone and enjoy all the fruits of their labor even though such fruits may be less abundant. As men become more honest and less selfish, the co-operative spirit develops. As men become more and more proficient in their grasp of economic principles, they are able to understand the part played by each factor in general production, and therefore they are better able to agree on a division of the product into individual shares.

But to understand the problem is not enough. Some exact method of applying the principles must be used to secure results. Such a method is furnished by modern accountancy. Accounting has a double task to perform: (1) to secure responsibility and attention to duty and (2) to determine the part played in joint production by the several elements in business organization and consequently the proper share of each in the common product. The co-operative spirit, so necessary in the complex organizations of our modern business life, awaits the development of a higher standard of business morals and a more perfect understanding of economic principles and the application of such principles through the science and art of accounting.

That the character of business organization is profoundly affected by industrial conditions does not need to be proved. In the handicraft system the organization

was bound to be simple; in the factory system the organization becomes complex as the factory operations become complex and intricate. Thus, the inventions of the spinning jenny, of the power loom, of the steam engine and the locomotive, of the telegraph and the telephone, of Bessemer steel and of reinforced concrete, have been, during the past century, dominant forces, causing business organization to become more and more complex and more and more extensive.

The enlargement of modern states through the absorption of small political units, the extension of free trade areas, the development of cheap transportation and of the world market, have constantly been calling for a higher organization of the industrial activities.

Furthermore, the amount of capital ready for investment and the freedom with which it flows into the hands of business managers, play an important part in shaping business organization. The industrial and financial conditions for the past century have been demanding changes in business organization, all looking toward greater complexity and greater size.

On the other hand, the unfavorable political conditions, the low standard of business morals, lack of a knowledge of economic principles, unscientific accounting, and a scarcity of men of the proper caliber to undertake the task of organization and management for large and complex business undertakings—all these factors have prevented the normal development of business organization corresponding in character with the technical development of the industrial world. Rapid progress has been made in all of these lines in the past century, and it may be confidently expected that such barriers to the proper development of business organization will be of less importance in the future.

Classes of Organizations

As already stated, the function of the enterpriser, or business manager, is to organize the factors of production into a working union, direct their activities, assume the risk of failure, and receive the rewards of business success. Under ordinary conditions, in industrial societies as at present carried on, there are three principal types of business organizations, each having peculiarities of its own, each being fitted for certain kinds of business operations, and each having certain limitations which prevent its general adoption. These three kinds of business organizations are the individual proprietorship, the partnership, and the corporation.

TEST QUESTIONS

1. What is the object of organization in modern business?
2. What is the relationship between business organization and business management?
3. What are the four factors of wealth production? How are they combined in actual business operations?
4. What is the importance of business units in relation to this subject of business organization?
5. What are the essential features of a communistic system of organization? of socialism? of co-operation?
6. How does the capitalistic system differ from all the foregoing systems of industrial organization?
7. What are the four main industrial groups in modern business organization? How do the problems of organization differ in each?
8. In what notable way does the policy of the German Government with respect to business organizations differ from that of the United States Government?
9. What is meant by an enterpriser? Would he exist under a socialistic system of industrial organization?
10. Mention the three chief types of proprietorship organization.

CHAPTER II

INDIVIDUAL PROPRIETORSHIP

Advantages

The individual proprietorship has several marked advantages which make it a prominent type of business organization.

In the first place, the individual proprietor can ordinarily undertake any kind of business enterprise except those which are assumed by the government exclusively, or are forbidden on grounds of public policy, or require special licenses. An individual business enterpriser cannot, in the United States, undertake the transportation of the mail, or engage in coining money, or at the present time engage in the lottery business. Nor can an individual ordinarily undertake the business of selling alcoholic beverages without a license from some responsible government. But outside of those business activities which are assumed by the government, forbidden entirely, or permitted by license only, the individual proprietor is free to enter into any business enterprise, conduct it as long as he pleases, and retire from it whenever he has completed all the contracts into which he has entered. The ability of the individual proprietor to enter into business undertakings without any formality, and retire in the same way, is an important factor in promoting business enterprise and in keeping the several lines of business activity evenly developed.

In the second place, the individual proprietor, having no one else to consult, can act in emergencies with greater

promptness than the more complex forms of organization. He may take advantage of business opportunities that are impossible in the case of partnerships or corporations. For the same reason he may also avoid certain dangers that ordinarily surround, and sometimes destroy, business enterprises. Of course the ability to act promptly is not an unmixed business blessing. Hasty action is often the direct cause of business failure. Where deliberation and the combined judgment of several men are desirable, the individual proprietorship has marked disadvantages. The individual proprietor, then, having the power to act on his own responsibility, must needs be a man of sound business judgment and discretion in order to maintain his business existence side by side with organizations which are able to use the business ability of several men in determining questions of business policy. As business conditions become more stable and the law of business success becomes better known, the advantages of the individual proprietor grow less and less.

In the third place, the individual proprietor can keep his own affairs to himself. While the element of secrecy is of less and less importance as business management becomes more of a science and less of an art, still the more competitors know of one's business plans and processes, the less the chance of ultimate success. This is the inevitable result of two conditions, both of which seem to be permanent factors in our present-day economic system. They are (1) competition and (2) ignorance.

Competition is the economic struggle of similar business units for supremacy; hence strategy, maneuvering, and sometimes deceit, play an important part in business success. Details of plans must be kept from competitors,

and this is always difficult and sometimes impossible where many men are interested in the business management. Second, it is only by keeping one's business enemies in ignorance of one's plans, methods, and processes that one is able to keep whatever advantage comes from exclusive knowledge. As secret processes become known to the trade and as business success becomes more and more dependent upon efficiency in production, the advantages of the individual proprietor in this respect become of less importance.

In the fourth place, since every business enterprise has its own peculiar risks and those who undertake the organization and management reap the profits from their exclusive operation, it follows that the same parties ought to suffer the natural penalties that result from unsuccessful management. In the individual proprietorship this is ordinarily the case. Those individual proprietors prosper who manage their business enterprises well; those who do not, soon fail and take their proper places as superintendents and laborers. The law of the survival of the fittest is applied with almost relentless certainty to business enterprises operated under the control of the individual proprietor, and rapid progress in the science and art of business management is a necessary result.

Disadvantages

There are, however, several particulars in which the individual proprietor fails to provide successful business organization for particular kinds of businesses. The more important of these disadvantages may be enumerated and placed in contrast with the strong points of this type of organization. In the first place, owing to the demand for large organizations in certain industrial groups.

the capital at the command of any one individual is often insufficient for the construction and operation of a plant of the greatest economy; hence individuals combine their capital. In the second place, large enterprises often require business judgment, skill, and ability beyond the capacity of any one man to furnish; hence several men enter into a combination to conduct jointly a business enterprise in order that they may secure the benefits of their co-operative wisdom. In the third place, in accordance with the teachings of the modern theory of risk, business men hesitate to put all their eggs in one basket and assume the risks that follow from such a policy. Moreover, the individual proprietor cannot avoid the risks by organizing and managing many small enterprises, for in the first place any one of such enterprises is liable for the losses suffered by any other of the business enterprises; in the second place, this scattering of the capital within the control of any one individual, unless he is unusually wealthy, prevents him from securing the economies of large-scale production.

Industries to which Suited

For these reasons the individual proprietorship is adapted to the following classes of industrial enterprises only: (1) Those where the capital required for efficient production is small; (2) those where the risks of conducting the enterprise are relatively slight; (3) those where the operations are simple in character and well understood by the average business man. Consequently organizations in which the skill and capital of a number of individuals are united have largely superseded the individual proprietor in all the industries which require large-scale production to secure the greatest efficiency.

TEST QUESTIONS

1. Name three classes of business which are not open to individual enterprisers at the present time in the United States.
2. What are the chief advantages of the individual proprietorship plan of business ownership?
3. How does the law of survival of the fittest apply to individual proprietorships?
4. To what classes of industries is the individual proprietorship especially adapted?
5. How large a business would you conduct on the individual proprietorship basis?
6. What three big disadvantages does the individual proprietorship organization enjoy in large scale production?
7. Does the individual proprietorship form of agricultural organization promise to continue? Why?

CHAPTER III

THE PARTNERSHIP

The Nature of a Partnership

The simplest form of organization by which the skill and capital of two or more men may be combined for the purpose of undertaking the management of business enterprises is the partnership. The partnership may be defined as "the result of a contract between two or more competent parties to combine their money, property, skill, or labor for the prosecution of some lawful business for profit." A partnership may be formed by the mutual agreement of any group of men for any lawful object. Each of the partners ordinarily has equal rights with all the others in the management of the business. By agreement, however, the rights of special partners may be limited, as in the case of a dormant or special partner. The partnership, as a result of its natural characteristics, has the following essential features:

(1) Each partner is agent for the others for the purpose of conducting the business for which the partnership was formed; consequently any contract properly connected with the business and entered into by any one of the firm, is binding on the partnership. The management is in the control of the several members of the partnership, acting both jointly and severally. Since each of the members has equal rights with all the others, it is impossible to conduct a partnership business through the agency of a selected board of directors.

(2) The partnership is terminated by the death or retirement of any one of the partners, and hence is always an organization of limited duration. It is a personal relationship, and hence a partner cannot sell his interest to a third party except with the consent of all the other partners, in which case a new partnership is formed, although it may retain the old name.

(3) The partnership is not recognized in legal theory as a business unit; in case of business troubles, suits are brought against one or more of the individual members of the firm and not against the firm itself. All the personal property of any one of the members of a partnership may be attached and, on judgment by a court of competent jurisdiction, sold to pay the debts of the partnership. In case of insolvency, each partner is personally liable for all the partnership debts.

General and Special Partnerships

Partnerships are classified with respect to the scope of their business operations into general and special. A general partnership is one organized for the operation of some general line of business, while a special partnership is one formed to undertake some definite task or some particular line of business. Most commercial and professional partnerships are of the former type, while partnerships formed to purchase and subdivide a piece of real estate, to finance and sell patent rights, or to promote and underwrite a corporation, are examples of the latter. Such special partnerships are often known as "syndicates."

The general partnership seems to have developed from the special partnership in relatively recent times. In the early stages of the world's industrial organization the individual proprietor was the characteristic if not the ex-

clusive agency through which business enterprises were conducted. During the early Middle Ages commerce by sea was in a rapid stage of development and many varieties of the special partnership were devised and extensively used for the purpose of sharing the risks of commercial undertakings in foreign lands and on the high seas. With the advent of the modern economic system, late in the sixteenth century, the partnership relation was extensively adopted for the conduct of commercial and manufacturing organizations at home. Since such organizations were expected to be relatively permanent, the general partnership became the dominant type and the special partnership was reserved for more temporary undertakings.

Ordinary and Limited Partnerships

Partnerships are again classified with respect to the liability of the partners into ordinary and limited. In the former, all the partners are subject to the ordinary conditions as specified above. In the latter type, which may be formed only under the direct authority of statute law, some of the partners are silent and inactive, and their liability is limited by the amount of their investments. Such partners take no part in the management of the business.

The Articles of Copartnership

The partnership relations are determined at the outset and regulated during the life of the organization by an agreement between the partners. While partnerships may be formed by oral agreement, they are ordinarily stated in writing, and in such case the statement containing the contract is called "the articles of copartnership." After the articles of copartnership are once drawn up,

they can be changed only by the unanimous consent of all the members. Hence they are of the utmost importance and should be formulated with the greatest care.

The articles of copartnership differ with the character of the business undertaking and the extent of the work which is undertaken by the copartnership. In all cases, however, they should cover the following subjects: (1) The partners to the contract; (2) the firm name; (3) the purpose for which the copartnership is formed; (4) the investment of the parties and the division of profits and losses; (5) the character of the accounting system; (6) the conduct of the business; (7) the method of management; (8) the rights of the partners; (9) the dissolution of the partnership.

PARTNERS AND THE FIRM NAME

The first clause in the articles of copartnership should give the names and business addresses of the several members. Since a partnership is a contract, only those competent to enter into such agreements can form a partnership. The list includes natural persons possessing the necessary qualifications, other partnerships, and, in cases where the charter specifically provides for such unions and the laws permit, the corporation.

In connection with the names of the parties, the style of the firm name and the place of business should be given. The firm name may be either that of the parties to the agreement, as A & B, one or more of the parties and some phrase including the others, A, B & Co., or a company title, as The Sunlight Company.

PURPOSES OF PARTNERSHIP

The second section should state the purposes for which the partnership is formed. Since a partner's rights and

duties extend only so far as the activities of the partnership necessarily demand for its successful operation, this clause should state especially the character of the business and the limits to which the business operations of the firm extend. Otherwise constant internal trouble and often litigation follow in order to determine the field within which the acts of any one of the partners is binding upon the others. For example, if a partnership is formed to deal in particular products, the names of such products should be given in detail. Thus teas and coffees should be specified, rather than groceries, where it is the purpose of the agreement to limit the business to these two articles.

FINANCIAL ARRANGEMENTS OF PARTNERS

In stating the investments of the partners, the exact kinds and quantities of capital contributed by each should be given in detail. Where the investment is in the form of money, the case is simple; where, however, the investment is a particular piece of property, or particular stocks of goods, or a firm name, good-will, trademarks, etc., the case is more complex. Especial care should be taken in specifying the kinds of property invested. Since the partner has no claim to interest on his investment, unless by express agreement, the value of the property upon which he is to receive interest and the rate at which interest is to be reckoned, should be stated in the original agreement. Furthermore, since the parties usually give all or a portion of their time to the firm's business, the salary which each is to receive should also be included in the formal agreement. This is obviously desirable since sometimes partners who contribute the larger share of capital investment, and therefore are entitled to a larger share of the income in the form of interest, may

be less valuable members from the salary standpoint. It is clear, of course, that any partner who draws a larger salary from the firm than he is commercially worth is to that extent receiving a part of his partner's profits.

ACCOUNTING AND AUDITING

In order to determine the profits and losses it is necessary to employ a proper accounting system. It is desirable to specify that proper books of accounts should be kept and that scientific methods should be used in the interpretation of the books for the purpose of determining the respective share in the profits to which each partner is entitled. In general there are two methods of determining the relative profits: (1) from an audit made by the members of the firm or by an accountant directly in its employ; and (2) by an audit made by an independent professional auditor. It is of course unnecessary to provide in detail how the accounts should be kept. It is sufficient to require that the proper books be provided and that they be periodically balanced and audited. It is also desirable to provide that any member may have an accounting made whenever evidence of fraud or mismanagement appears, without appeal to any court. In all cases where a partnership conducts a business of some importance, an annual audit of the books by an independent professional auditor of recognized standing and ability should be provided for in the articles of copartnership. Such audits are desirable not only because they are likely to prevent fraud, but because they are one of the important aids to good business management.

POWERS OF INDIVIDUAL PARTNERS

Owing to the fact that the acts of each partner, so far as such acts may be reasonably assumed to be connected

with the partnership business, bind the firm, and that generally all the members take part in the active management, it is always desirable to state the extent to which this general principle shall apply in any particular partnership. For example, it is possible and usually desirable to provide in the articles of copartnership that no one of the members shall have power to enter into a contract involving the firm above a certain sum, without the agreement of all the partners and their individual signatures. It is also possible to provide that in the employment, direction, and management of employes, especially of heads of departments, superintendents, etc., the consent of all members shall be obtained before contracts are entered into. It is also desirable in certain cases to provide that one of the members shall act as manager. This may be done by an agreement of the members inserted in the articles of copartnership. On the other hand, it may be desirable to provide that all important matters involving new ventures or new methods shall first be discussed by all the members of the firm and adopted only after the consent of the majority has been obtained.

RIGHTS AND DUTIES OF PARTNERS

The respective rights and duties of the partners should be explicitly stated in the articles of copartnership. The time which each is to give to the business, the extent to which each may be engaged in outside undertakings, the right to an accounting, the right to purchase or sell land or other property belonging to the firm, the right to make contracts, the right to undertake individual obligations which may interfere with the credit of the partnership—all these are proper subjects for determination before a

partnership is organized, and should be included within the formal contract under which it is operated.

It is also desirable to specify in the articles of copartnership under what conditions a partner may withdraw, what his rights are in case of dissolution, and his share of the firm's good-will. The dissolution of any partnership may, of course, be provided for in the contract. This, however, is often left to the mutual consent of the parties. In certain cases it may be forced upon them as a result of unfortunate circumstances. Wherever dissolution is not provided for in the original contract, and in most cases even though such be the case, a special clause should be inserted setting forth the terms under which any one member may withdraw. Circumstances may arise which render it exceedingly desirable for some one member to withdraw from the firm and engage in other business activities or to retire from business entirely. At the same time it may be exceedingly desirable for the other members to continue the business. In such a case the retiring member is, without any previous arrangements, entirely at the mercy of those who remain. And it is too often the case that the retiring member fails to get his share of the property and the property rights of the partnership. It is impossible to provide in advance for every contingency; it is, however, possible in all cases to provide for the withdrawal of any one member and for a proper division of both the property and good-will of the firm in case it is found desirable for any one to retire.

Dissolution of Partnerships

Partnerships may be dissolved by any one of the following methods:

1. By contract, that is, by mutual agreement between

the partners either in the original contract, setting a time for its termination, or by subsequent agreement.

2. By withdrawal of a partner. Withdrawal is a "power," but not a "right," of a partner. He may be liable to the remaining partners for actual damages caused by his withdrawal. In some cases specific performance of the contract may be compelled where adequate legal damages cannot be secured for the injury which would follow withdrawal.

3. By bankruptcy of a partner.

4. By bankruptcy of the firm.

5. By the death of a partner.

6. By war between nations represented by the contracting parties. A declaration of war automatically breaks off all partnership agreements between citizens of the belligerent powers.

7. By court decrees in case of misconduct of the business, insanity of a partner, or insolvency as indicated above.

Conditions of Success

It is impossible to provide for all the contingencies that may arise in the conduct of any business, even those of the simplest character, no matter how perfectly the general principles of the partnership are stated or how explicitly the details are drawn up. Much must depend upon the good faith of the parties to the agreement. In early times the partnership originally seems to have grown out of the family relationship. A father develops a business enterprise and, upon his son's coming of age, gives him an interest in it. Later other sons and sons-in-law are added, until the organization becomes of considerable size. When the father dies, the tie that binds the organization loses a part of its family characteristics.

Gradually favorite clerks and expert workmen are taken into the partnership, until the last trace of its original character is lost. Even though it retains none of the ties that bind the family together, there still needs to be observed between the members of the partnership the same good faith that ordinarily exists within the family circle.

The partnership, therefore, above all other forms of business organization, demands the highest standard of business honor. The members of a partnership may deceive those from whom they purchase materials, cheat their customers, and such business sins may be overlooked if not forgiven. But lack of good faith between partners is death to the partnership form of business organization.

Owing to the right of each member of the partnership to take part in the business management, this form of organization cannot, under the most favorable conditions of business morals, be used for conducting the larger business enterprises. Whenever many men become parties to an organization, they must content themselves with choosing leaders and surrender to a selected few their rights to partake in the active management. While the partnership may designate one of its members as business manager, still the important questions connected with the administration of a business in the larger sense must come before all; consequently the partnership is fitted for those business enterprises where only a few men co-operate.

It follows from this fact that the partnership can ordinarily command only a limited amount of capital, and thus its operations must be confined to those fields where small plants and small establishments operate with the greatest economy. Partnerships are the characteristic method of organization for conducting small manufac-

turing establishments, retail stores, brokerage business, contracting on a small scale, and for professional services where the personal element is of importance. For larger undertakings, those requiring a larger investment of capital, the corporate form of organization is better adapted.

Joint Stock Companies

The joint stock company form of organization was created to overcome certain of the handicaps of a partnership. It partakes of the character of the partnership on the one hand and of the corporation on the other. It may be designed as a voluntary association of individuals for profit, having a capital divided into transferable shares, ownership of which is the condition of membership, and managed by a selected board. Such companies, like partnerships, operate under the principle of unlimited liability of the individual members.

The essential features of a joint stock company are:

1. Capital stock divided into shares, which are readily transferable.
2. The shares indicate the holder's right to vote as well as to share in the income of a business and determine his liability for losses.
3. Personal or unlimited liability of the members for all the debts of the concern which are not satisfied by the assets.
4. Authority exercised by a Board of Directors chosen by the shareholders.

The articles of association usually state the object of the company; the number and amount of shares and their manner of assignment; the number, selection, and duties of the directors; and in general the duties, rights, and obligations of the members among themselves. In

most states the statutes contain special provisions governing the organization of such companies.

This form of organization was of considerable importance in the middle ages, especially in connection with the development of trading companies. At the present time it is not nearly so common as the partnership form or the corporation form, yet such notable examples of joint stock companies may be cited as the Pierce-Fordyce Oil Association, with a capitalization of several million dollars, and the Adams Express Company. The chief handicap of this form of organization is its unlimited liability feature. It is, however, only in case of bankruptcy or threatened bankruptcy that this feature becomes of practical importance.

Mining Partnerships

Mining partnerships exist in all mining communities. They are really a form of joint stock company. The peculiar risks of the business make it practically impossible for a corporation with limited liability to secure credit. Furthermore, development is usually by means of leases. The mining property itself is outside the scope of the mining partnership and, therefore, profits of operation alone can be considered. The necessity of continuous operation usually exists in order to avoid damages by floods. The partnership form, with its danger of dissolution at any moment, is evidently not well adapted to this kind of work. Therefore, for the sake of enlisting large numbers of members in the enterprise, securing credit facilities, and maintaining continuity of life, mining partnerships in the form of joint stock companies are used in this work.

TEST QUESTIONS

1. How may a partnership be defined?
2. What are the four essential characteristics of a partnership as brought out in the definition?
3. Distinguish between general and special partnerships. Do you know of a concrete case in which a special partnership was organized? Do you see any application to your own affairs?
4. What are the rights of a limited or silent partner? Can a limited partnership be formed in your state? Under what conditions?
5. Do you have in your mind's eye in the form of a picture the nine important subjects that should be included in the articles of copartnership?
6. By what seven different methods may partnership be dissolved?
7. What is meant by "withdrawal is a power, but not a right, of a partner"?
8. Under what conditions and for what classes of business would you use the partnership form?
9. What are the essential features of a joint stock company?
10. Under what conditions would you organize a joint stock company?
11. What are mining partnerships? Why do they exist?

CHAPTER IV

THE CORPORATION

A Legal Entity

The corporation in its most perfect form unites so far as possible the best features of the individual proprietorship and the partnership. Like the former, it is an individual from the business and legal point of view; like the latter, it is composed of a group of individuals, whose capital and skill have been united into one organic union.

According to Blackstone, "the corporation is an artificial person created for preserving in perpetual succession certain rights which being conferred on natural persons only would fail in the process of time."

Chief Justice Marshall, in the classic Dartmouth College case, defines a corporation as "an artificial being, invisible, intangible, and existing only in contemplation of law."

These two definitions strike the keynote of the great majority of legal definitions and prevail generally among lawyers. The central idea is that of an artificial personality or legal entity, making the corporation an abstract, artificial creature of the law, entirely dissociated from the human beings that organized it. It is a business unit made up of a group of natural persons who have lost their identity, from the standpoint of the community, for the purpose of undertaking some particular business enterprise.

The almost complete separation of stockholders from the corporate entity is furthermore shown in some of

the legal powers of a corporation. A corporation is a legal person that can sue and be sued in its own name. It can also hold property in its own name. A partnership can do neither.

This strictly impersonal conception leads directly to the conclusion that "a corporation has no soul." It is only fair to state, however, that recent legal decisions emphasize more and more the associative and human factors in a corporation. The tendency at the present time is to go beyond the artificial personality and place responsibility on the owners and managers of a corporation.

A Creature of the State

Unlike a partnership, which is formed by the mutual consent or agreement of the parties, a corporation is created by the state and is usually spoken of as a creature of the state. It can be formed only through the formal action of some duly authorized political body, such as one of the American states.

Until comparatively recent times, that is, until early in the last century, corporations were authorized only by a special act of some legislative assembly. Beginning about 1825, several states introduced the policy of providing for the formation of corporations under a general corporation act. On complying with the terms of this act and paying the required fees of registration, companies were chartered by some public officer designated for that purpose, generally the secretary of state.

The change from incorporation by special act to incorporation under a general act was advocated and finally adopted about ten years before the Civil War, in all the American states for the following reasons: (1) Under the former method it became customary to grant special

privileges to certain corporations backed by powerful interests or by friends in the legislature; legitimate business interests having no influence and no friends at court found difficulty in securing a charter at all; (2) the legislatures were in session only part of the time, and it was often found desirable to form a corporation to undertake some special business enterprise when the legislatures were not in session; (3) finally, it came to be generally recognized that freedom of incorporation rather than incorporation at the will of some political authority was demanded by the legitimate business interests of every community. Consequently, under the influence of these three forces, the former method was gradually abandoned and the method of incorporation under a general act was almost universally adopted. In some states, however, at the present time, certain kinds of corporations can be formed only by special act of the legislature. In other states the legislature reserves the right to incorporate companies directly whenever in its judgment the public interests demand such action.

In most states, however, since the middle of the nineteenth century, any group of men can form themselves into a corporation, for the purpose of undertaking any legitimate business enterprise, simply by complying with the provisions of the general act, filing their charter with the secretary of state, and paying the fees required by law. The usual process by which this is accomplished will be described in a subsequent section.

Since a corporation is a creature of the state, it follows that it possesses only those powers with which it has been endowed by the state. The constitution and laws of a state, together with the charter of the corporation, are the measure of its corporate powers. Acts done outside of the grant of power to a corporation are *ultra vires* and

cannot be enforced by the corporation, though certain legal liability may be attached thereto.

As a necessary result of the method by which corporations are formed, namely, by an act of some political authority, those in actual existence may lack some of the characteristics which are necessarily present in a theoretically perfect corporate organization. As would naturally be expected, the earlier corporations have only a portion of these normal characteristics, and even at the present time some corporations which lack some of the characteristics that belong to such organizations are created by certain states. The four most important of these characteristics are (1) limited liability, (2) continued existence, (3) transferable shares, and (4) centralized control.

Limited Liability

In the corporation as organized at the present time liability for debts due creditors is by law placed upon the business enterprise or enterprises which the corporation owns rather than upon the individuals which compose the corporation. The individual stockholder is consequently relieved of personal liability, and in case of failure loses his financial investment in the particular corporation only.

The adoption of this principle in law has been of slow growth. The Romans, under whose system of jurisprudence the corporation first became important, recognized this principle to a limited extent. It was not, however, until the fifteenth or sixteenth century that the corporation achieved much importance in the business world in England, and even then the limitation of liability was authorized in the case of certain corporations only. As a general feature belonging to all corporations this

peculiar privilege of the corporation was not adopted generally until the early part of the nineteenth century.

In the United States there were only about half a dozen corporations created before 1789, and the number was exceedingly limited until after the beginning of the nineteenth century. With the advent of railroads at the end of the first quarter of the nineteenth century, corporations were formed in increasing numbers for the purpose of operating railroads, canals, and other important enterprises. In some cases they were granted limited liability, but in general it was not until the middle of the last century that this right was generally recognized in the statute law of the various states of the Union.

In theory the adoption of the principle of limited liability in law follows from the recognition of the corporate personality, a personality distinct from that of the individual stockholders who compose it. To conceive the corporation as an individual, one must lose sight of the persons of which it is made up; when this conception is reached, the natural individuals being lost sight of, liability for debt is placed upon the artificial personage in whom all the individual stockholders are merged.

In practical affairs, however, the adoption of the principle is to be credited to other causes. In the early part of the nineteenth century New York and Massachusetts were the leading states from an industrial point of view. The dangers of investment in partnerships large enough to carry on the business undertakings demanded by the times called for changes in the corporation law, of which the most important was the adoption of this particular principle. The legislature of New York saw the opportunity and granted the privilege demanded. The result was a remarkable development of the corporation and of corporate enterprises in that state. Its adoption in New

York was followed by the same action in Massachusetts, and later in other states, with similar results.

After this principle had been generally adopted, none of the harmful consequences which had been freely predicted followed. Indeed, from a strictly economic point of view there are good and sufficient reasons for its adoption. As already stated, in case of failure, where the principle of limited liability is granted, the burden of the failure is placed upon the business itself rather than upon individuals and other business enterprises in which the individual stockholders have invested. Those who sell goods to a partnership are often glad to extend credit far beyond the point which the business of the firm justifies, especially in cases of probable bankruptcy, in order to collect from some of the wealthy members of the organization. Those who sell to a corporation, on the contrary, know that the corporate property only is liable for the debt and hence discretion in extending credit to a corporation is a necessary result. Credit is extended not on the individual responsibility of the stockholders, but on the reputation and solvency of the corporation as a whole.

From the standpoint of the stockholder the adoption of this principle has been one of the powerful incentives to save and invest in business enterprises. This, to a certain extent, accounts for the rapid development of industry through the agency of the corporate form of enterprise.

Continued Existence

Individuals die; partnerships are terminated by agreement and are dissolved for many unforeseen reasons; but corporations theoretically may live forever. When an individual proprietor dies, it is possible that his business

may be transferred to some one else and thus continued. In many cases, however, such enterprises are abandoned on account of the failure to find anyone who cares to undertake the proprietorship and management of the business. Where a partnership is dissolved, some of the partners may desire to continue, and they, together with other men, may form a new partnership for the conduct of the same business enterprise. It is difficult to find a group of men who are able to work harmoniously in the intimate business relationship which the partnership demands, and it is usually difficult for any one of the partners to find a person who cares to assume the responsibilities which belonged to a former member of the organization.

In the case of a corporation, conditions are much more favorable to the continued existence of the organization. As stated by Blackstone, the corporation is formed for preserving in perpetual succession rights which otherwise might terminate owing to the death of the individuals to whom they belong. In the corporation this particular feature, namely, perpetual existence of the corporate organization, is accomplished by means of the substitution of one person for another through the transfer of property rights. When A dies, his shares of stock are transferred to his legal heir or heirs and the latter takes his place in the corporate organization. Thus it is only by the death of every individual at the same time, an impossible supposition, that the existence of the corporation could be terminated in the ordinary way. Under ordinary circumstances it is proper to say that the corporation enjoys perpetual existence.

Some states limit the duration of a charter to a certain period of years, such as twenty, fifty, or ninety-nine years. This is especially true of businesses affected with

a public interest, such as banks, public utilities, etc. Unless the charter of a corporation or the constitution and laws of the state under which it is issued limit the life of a charter, or unless the constitution or statutes of the state expressly reserve the right to repeal or amend a charter, its duration is perpetual. When the power to repeal or amend charters is reserved by the state, it may not be used arbitrarily or unreasonably.

The life of a corporation may be terminated in any one of the following ways:

1. Voluntary dissolution upon a vote of the stockholders according to the charter and legal provisions.
2. Expiration of the period of the charter.
3. Insolvency.
4. Forfeiture of the charter to the state for misuse, non-use, or abuse of its power.

The life of a corporation does not always automatically end when the corporation ceases to do business. The corporation will continue its legal existence unless its life has regularly ended by one of the above methods.

It follows, therefore, that a corporation, contrary to a partnership, continues for the term of its existence, whether it be a period of years or perpetual. Its life is uninterrupted by the dissatisfaction, financial embarrassment, insanity, death, or retirement of its stockholders. The entire membership may change again and again, just as a stream, which remains always the same, though the water constantly changes.

Transferable Shares

The shares of a corporation are treated as personal property and may be sold at any time without affecting the corporate existence. For this reason the investments are divided into small amounts of such size that the ordi-

nary investor may purchase at least one share. Corporations appealing to the smaller investors subdivide their capital stock into shares of smaller denominations, while those which appeal to the larger investors issue their shares in larger amounts. Consequently by a proper subdivision of the capital stock into shares, any portion of the business which the corporation conducts may be sold and transferred from one person to another at any time.

In this respect the corporation is in striking contrast to the individual proprietorship and the partnership. The individual proprietor must sell his property as a whole except in cases where it may be operated successfully in parts. To sell a portion of his property without division creates in reality a partnership of interests. He must find a purchaser who desires just such a business enterprise as he has to sell. The partner cannot sell his interests without the consent of all the other partners and therefore, in order to sell, he must find a man who is personally acceptable to all members of the firm, ordinarily a difficult task. A partner who desires to sell out his interests sometimes finds that his business associates are too ready to take advantage of his desire to sell unless such contingency has been carefully provided for in the articles of copartnership. Furthermore, the selection of a successor is made doubly difficult owing to the fact that all the partners are managers, and hence the successor of one desiring to sell his interest must be not only an acceptable business companion, but a good business man.

Centralized Control

In a corporation the management is in the hands of officers selected from the body of stockholders and em-

ployes under their direction. The ordinary stockholder, therefore, takes no active part in the management. He can sell his interests without impairing the efficiency of the management. The market for shares in a corporation is consequently much broader than in the case of a partnership. Those unable to take part in the management, including widows, children, institutions having trust funds, and even other corporations, are in a position to purchase and hold shares. For the purpose of making such transfers the facilities of a broad market are furnished by the stock exchanges which exist in all the larger cities.

In its management the corporation is like the individual proprietor. Its control is centralized into one organic unit, a board of directors chosen by the stockholders to represent the corporation and to determine its business policy. It differs from the partnership, where all the members are, theoretically at least, managers and where actually all generally take part in the active management. It is true, as before stated, that the active management of a partnership may be entrusted to a managing partner. This, however, is the exception, and not the rule. The general efficiency of the management in a partnership is determined by the general business ability of all the partners; in the corporation the stockholders are by law required to select a few of their number to take active charge of the business policy.

While it is possible that in certain cases men of small business capacity have been chosen to act as directors, generally those having the greatest ability as business managers are chosen upon the board of directors. The corporation, therefore, possesses practically all the advantages of the individual proprietor so far as promptness of action and ability to meet emergencies are con-

cerned, and even greater advantages than the partnership with respect to collective wisdom.

The authority vested in the central administration is subdivided by departments and sub-departments, as will be fully explained in a volume on *Industrial Organization and Management.* In their external organization, corporations resemble an army with its general staff, generals, colonels, captains, lieutenants, and soldiers. In the corporation the board of directors corresponds to the general staff. Under the board of directors, committees, the president, vice-presidents in charge of important departments, division superintendents, and section bosses, form the complete organization, all resting upon the authority of the central administration.

In the organization every detail of administration is parcelled out; the work of management is specialized; the responsibility is subdivided from the central office to the lowest ranks, so that every one has his duty, and methods for determining the efficiency with which each works can be successfully applied. The art of business management under the corporate form of organization becomes a science and in our larger corporations men of the broadest experience and most far-seeing ability are needed to prevent disaster and, much more, to insure success.

The four characteristics of the corporation which have been described above, namely, (1) limited liability, (2) perpetual existence, (3) ability to transfer interests, and, (4) centralized management, are features which, when combined in organic union, distinguish the corporation from other forms of business organization.

Classes of Corporations

Corporations may be divided into three main classes, each of which differs in some of the important character-

istics, but all are alike in possessing a majority of the features which have just been described. These three classes are (1) municipal corporations, (2) social or eleemosynary corporations, and (3) business corporations. The principal subdivisions of the three main classes are shown in the following table:

CLASSES OF CORPORATIONS

Municipal	Cities	
	Counties	
	School districts	
	Other political units	
Eleemosynary	Churches	
	Schools and libraries	
	Clubs, lodges, and fraternal organizations	
	Charitable organizations	
Business	Industrial	Manufacturing
		Mining
	Commercial	Wholesale stores
		Retail stores
	Public service	Railroads
		Street railways
		Gas companies
		Electric light companies
		Water companies
	Financial	Banks
		Trust companies
		Insurance companies

THE MUNICIPAL CORPORATION

The municipal corporation is a political body organized for the purpose of carrying on certain political and often business functions. An example of this class is the ordinary city. As a corporation it has a perpetual existence and a centralized government. Furthermore the property of individual citizens cannot be taken to satisfy the debts which the city government owes. The city, however, lacks one of the ordinary characteristics of the

corporate organization, namely, a citizen cannot sell his citizenship and thus dispose of his portion of the city's property. When he leaves the city domains he relinquishes all rights to his investment in the city, which by the payment of taxes he has helped to accumulate. Counties and school districts are other familiar examples.

SOCIAL AND ELEEMOSYNARY CORPORATIONS

The club, the church, the hospital, the university, are examples of social corporations. In all of these organizations, wherever incorporated, the liability of the individual member is limited by his investment, and the organization is perpetuated by the initiation of new members. In each case they select a board to conduct the business, and again are like the municipal corporation in respect to the right of the individual to transfer his investment. When a person resigns from a club, he loses his right to a share in the common property. He cannot sell his membership. The same is true of the other organizations comprised within this particular class.

THE BUSINESS CORPORATION

Business corporations differ in their important characteristics from the above classes in one respect only, namely, the interest of each individual is represented by a share called a "stock certificate," which can be transferred as other personal property. This is a natural result of the purpose for which business organizations are formed, namely, to utilize the capital and skill of the members in earning the profits to be divided among themselves. Municipal and social corporations, on the other hand, while engaged in performing some useful work in the service of their members or of the com-

munity, use the results of their work as a common fund and, except at the termination of their existence, such corporations do not subdivide their surplus earnings.

Business corporations are generally subdivided into classes based upon the character of the work which they undertake, as (1) industrial corporations, (2) commercial corporations, (3) public service corporations, and (4) financial corporations. The first includes all classes of manufacturing plants and mining companies. The second includes wholesale and retail stores. The third class includes railroads, electric traction companies, gas companies, electric light companies, water supply companies, etc. The last class includes banks, trust companies, and insurance companies.

This classification is of importance for the reason that public authorities, when granting charters determining the conditions under which corporations may live and operate, grant more extensive powers to the last-named classes, but at the same time regulate their internal affairs and their business operations with much greater strictness. In the corporation acts of various states there are ordinarily at least three parts—one under which the industrial and commercial corporations are chartered, one under which public service corporations are chartered, and a third authorizing the formation of the financial and moneyed corporations. The conditions of organization and their rights during existence differ widely in the various classes. In addition to obtaining their charter, public service corporations are usually obliged to obtain certain privileges called "franchises" from the municipality or territory within which they carry on their business. Industrial and commercial corporations, on the other hand, are in a position to do business as soon as their charter is granted by the state.

Since corporations chartered under the various sections of the corporation act are ordinarily kept distinct by state officials, it is often possible to secure statistics showing the amount of investment, the size of corporations, and the general character of their operations in each one of the particular kinds of business enterprises which have been described. This feature of the corporation law is of considerable importance in enabling economists, legislators, and business men to compare the development in the various lines of business enterprise and draw conclusions that are of value in relation to the industrial development of any particular state or section.

Private corporations are often classified as stock and non-stock corporations. A stock corporation exists for private gain or for profit. A non-stock corporation does not exist for profit in the form of dividends, but for some other mutual advantage of its members. Churches, lodges, and mutual life insurance companies are examples of such corporations.

From the standpoint of the sovereign who created the corporation, corporations are classified as domestic, foreign, and alien. A domestic corporation is created by the laws of the state in which it operates. It is foreign in every other state of the Union. An alien corporation is one created by another international state, as England, for example, and doing business in this country.

A further classification is that of *de jure* and *de facto* corporations. A *de jure* is one legally created. A *de facto* is one not legally incorporated, but doing business as if it were. A *de facto* may exist only when some relatively unimportant legal step has unknowingly been omitted or overlooked in the organization. In order to be a *de facto* corporation, there must be:

1. Laws under which the company could have incorporated.
2. A bona fide attempt to incorporate.
3. User of corporate powers.

Equity demands that such a concern should not be enjoined from continuing its life, because of the omission of a mere technicality. All such corporations should, however, take immediate steps to become corporations *de jure*. A few corporations exist by prescriptive right.

Advantages of Corporations

The advantages resulting from the important characteristics of the corporation, as given above, namely, limitation of liability of the individual stockholder, permanence of the corporate existence, transferability of rights in the corporation, and its centralized form of government, have led to its extensive adoption in recent years. In addition to the characteristics already described, it has the advantage of great flexibility in the number of those interested and in the amount of capital which it employs. A corporation can be formed in many states, having as few as three stockholders, or it may have any number. In some states a corporation may be formed composed of only one person and therefore having only one stockholder. In this respect it differs markedly from the individual proprietor or the partnership. By definition, the individual proprietor is limited to one person; for practical reasons the partnership is limited to comparatively few and attains its greatest success when it unites from three to ten persons only. In rare cases partnerships have been formed with twenty or more members; such partnerships represent an unusual type and are usually disrupted owing to internal dissensions.

Owing to its flexibility in numbers, the corporation

may have either a small capital or a large capital, according to the nature of the business which it is formed to operate. It may compete with the individual proprietor and the partnership in its economy in the use of capital, and it may under other circumstances comprise a sufficiently large number of people to gather the amount of capital sufficient to conduct the business of an entire industry.

Disadvantages of Corporations

In contrast with the advantages of the corporation it is well to notice that there are certain disadvantages that necessarily belong to this form of organization.

In the first place, as the corporation is a creature of the state, it is usual to charge certain fees for incorporation of a business enterprise in the corporate form. The fees charged vary in different states from a merely nominal amount to an amount that constitutes a tax upon the industry. Most states also charge an annual license fee, usually small in amount, which must be paid regularly in order that the corporation may continue its existence. In addition to fees for incorporation and for continued existence, some states provide a special form of taxation for corporations, and thus discriminate against this form of organization as compared with the individual proprietor or the partnership. A most marked example of this kind was the Federal Corporation Tax Law enacted by the United States Congress.

In the second place, the states usually require corporations to make certain reports to the secretary of state or some other officer, showing their financial condition and other details in regard to their internal organization. In most cases such reports may be prepared directly from the annual statements made by the com-

pany's auditors. In certain cases, however, as, for instance, the railroads in the United States, the annual report must be filed as of the thirtieth of June, whereas a large number of the corporations make their reports cover the period from January first to December thirty-first. This necessitates considerable additional expense, owing to the preparation of accounts covering a different period from that which the company's books include. Again, states in many cases require details which would not ordinarily be furnished by the regular books of the company, thus causing additional expense on this account.

In the third place, the corporate form of organization necessitates an annual meeting of the stockholders and the preparation of elaborate reports for their information. While most of the stockholders are represented by proxy, the expense of the annual meetings cannot be entirely disregarded. This expense, however, is one that would be entailed upon any large organization.

In the fourth place, the corporation is managed by men who are employed for the purpose and paid for their work. The individual proprietor works for himself and receives all the profits directly. In the partnership each one ordinarily feels the direct connection between his work and its reward. The managers of a corporation, being paid for their services, are not under the same influence as the individual proprietor and the partner. It is, therefore, necessary to apply elaborate means for the purpose of securing efficiency in management. This is done in many cases by the use of statistical averages comparing the results of one manager with those of another and making the compensation depend largely upon the results of the business under the charge of any particular officer or employe. Such means of securing

efficiency are expensive and the corporation must always be willing to undertake such expenses, considering them the necessary disadvantages of this particular form of organization to be compensated by some of the various advantages which have been named above.

In the fifth place, the credit of a corporation depends entirely upon its capital and its business. The credit of the individual proprietor depends not upon the financial strength of the business enterprise in question, but upon the proprietor's entire resources. The credit of the partnership is dependent upon the entire resources of all the partners combined. Consequently, in comparison with these forms of organization, the corporation is often unable to extend its credit to the extent that is possible in the case of the individual proprietor or the partnership. While this limitation of credit is desirable from the standpoint of industrial development as a whole, it is often a distinct disadvantage to individual corporations.

Notwithstanding these several disadvantages, the corporation, owing to its marked advantages over other forms of organization, has shown remarkable progress and development in the last half century. To quote from an article by the author, contributed to the Yale Review:

> Formerly nearly all manufacturing was done by the individual entrepreneur, later by the partnership, now by the corporation; of the total production in the year 1900, nearly eight thousand millions in dollars, or almost 60 per cent of the total output, was the work of the corporation. Out of over five hundred thousand independent establishments in the United States, forty thousand in round numbers were in corporate form. The corporations were 12 per cent in number and produced 59.5 per cent of the output. The partnerships were 18.9 per cent of the total number of the establishments, producing 19.7 per cent of the total production. Individuals owned 78.8 per cent of the number of establishments

and produced only 20.6 per cent of the total amount of production. In certain lines the progress of the corporation has been particularly rapid, namely, in the manufacture of iron and steel, agricultural implements, coke, gas, electrical apparatus, manufactured ice, rubber goods, photographic goods, etc., etc. Thus concentration is accomplished through the corporation, and today, in a word, the corporation problem has to all intents and purposes superseded the trust problem of the previous decade.

Since 1900 the United States census has separated all the manufacturing establishments in the United States into four classes, as follows: The individual proprietor, the partnership, the incorporated company, and miscellaneous forms of business organizations. From the information thus gathered it is possible to measure the growth of the corporation as compared with other forms of business organization, at each of the census periods. The table below shows the changes in the character of the business organizations that took place in the ten years from 1900 to 1910. It is probable that the rate of growth which the corporation maintained in the years from 1900 to 1910 has been at least equaled during the period from 1910 to 1915.

MANUFACTURING INDUSTRIES

CHARACTER OF OWNERSHIP [1]	ESTABLISHMENTS			
	1910		1900	
	Number	Per cent	Number	Per cent
United States	268,491	100.0	273,705	100.0
Individual	140,605	52.4	171,843	62.8
Firm	54,265	20.2	62,627	22.9
Incorporated Co....	69,501	25.9	37,161	13.6
Miscellaneous	4,120	1.5	2,074	0.7

[1] Special reports of the Census, Manufacturers, Pt. I, 1910. The tables, while not exactly comparable, are sufficiently accurate for our purpose.

Character of Ownership	Products			
	1910		1900	
	Value	Per cent	Value	Per cent
United States	$20,672,051,870	100.0	$11,701,295,854	100.0
Individual	2,042,061,500	9.9	1,837,599,353	15.7
Firm	2,184,107,632	10.6	2,226,833,804	19.0
Incorporated Co....	16,341,116,634	79.0	7,606,019,056	65.0
Miscellaneous	104,716,104	0.5	30,843,641	0.3

TEST QUESTIONS

1. What is Chief Justice Marshall's famous definition of a corporation? In what respects has this conception of a corporation been modified in recent years?

2. What is the distinction between incorporation under a special act and incorporation under a general act of the legislature?

3. For what reasons have American states generally adopted a general corporation law?

4. What are four important characteristics of a corporation?

5. What is the advantage in the principle of limited liability?

6. Compare the management of a corporation with that of the individual proprietorship; with that of the partnership.

7. In what ways may the life of a corporation be terminated?

8. What are the chief classes of business corporations? Why classified?

9. What is the distinction between stock and non-stock corporations? domestic, foreign, and alien corporations?

10. What things are necessary to constitute a *de facto* corporation?

11. According to the United States census reports, what is the tendency in the growth of corporations as compared with other forms of business organization?

12. How does the volume of products turned out by corporations compare with that turned out by partnerships and individual proprietorships in the United States?

CHAPTER V

THE FORMATION OF THE CORPORATION

Promotion

The individual proprietor, having command of the necessary capital, can engage at once in any lawful business without formality of any kind. The formation of a partnership is somewhat more complex since it requires the agreement of several men, each contributing a share of the capital, and each, under ordinary circumstances, taking part in the management of the business. When the capital has been collected and the terms of the partnership arranged, the firm may then purchase its plant and machinery, appoint superintendents, hire laborers, and at once set out upon its business career.

Like the partnership, the corporation requires an agreement among several men to contribute capital to engage in a particular line of business. It does not, however, require an arrangement between the parties to undertake the active work of management. In order to form a corporate organization the voluntary action of a group of men is necessary, such group in certain cases meeting by agreement and drawing up the terms under which they are willing to engage in some particular enterprise. While this method is common in small undertakings, it is not adapted to the formation of large companies. Owing to the fact that subscribers to the shares of stock in a corporate enterprise usually live in widely separated districts, the larger corporations are promoted by some person who devotes his time to formulat-

ing a plan for the formation of the corporation, securing the necessary subscribers for the capital stock, and arranging the details connected with the beginning of its legal existence. The task of the promoter consists in finding and selecting the opportunity for undertaking some profitable business enterprise, securing the necessary capital, and providing at the beginning efficient management.

Financing the Enterprise

After selecting the enterprise the important work of the promoter is in securing the necessary capital. This may be accomplished either by personal solicitation through established bond or brokerage houses, through sale upon the stock market, or by direct appeal to the public through advertisements in the public press.

In smaller corporations, especially those having a local constituency, the personal solicitation of share holders is the usual method employed. A subscription contract is prepared, stating the essential features of the corporation to be formed. This contract is signed by those who subscribe for the stock. Opposite the name the number of shares of each subscriber is indicated.

In the formation of larger enterprises an appeal is usually made to the investing public through one or several of the above-described means. Established bond or brokerage houses have floated the securities of a number of our largest corporations and consolidations. Some of the best known of these houses are J. P. Morgan & Co.; Kuhn, Loeb & Co.; Harvey Fisk & Sons; Lee, Higginson & Co.; Kidder, Peabody & Co.; and Speyer & Co. These banking houses frequently form underwriting syndicates and dispose of securities through the syndicate.

Securities disposed of through the stock exchanges

must usually be listed according to the rules of these exchanges. After they are once listed the promoter loses practically entire control of the sale of the securities. Speculative movements are apt to operate with a great deal more force on the exchange than when securities are disposed of through an underwriting syndicate.

When an appeal is made to the general investing public through the public press, a statement is made, showing the character of the enterprise, the securities to be issued, and usually a statement of prospective earnings. Inquiries to these advertisements are followed up by letters and alluring prospectuses.[1]

All statements made by a promoter either orally or in writing with regard to the enterprise are subject to the general principles of the law relating to fraud. A promoter is bound not only to make his statements accurate, but also not to omit any facts of vital importance. He is furthermore in a sense a trustee of the interests of the corporation that he is organizing. He should act in good faith for its benefit. Secret profits and fraud when proved are regarded as illegal by the courts. His contracts and promises are personal obligations until they have been accepted and ratified by the corporation after it comes into existence. Ratification may be specific or implied.

The Choice of a State

In centralized governments, like England and France, charters for business enterprises are obtained only from the central government and consequently the promoters have no opportunity to choose between several states, each authorized to grant charters. In federal govern-

[1] These financing problems are adequately treated in the section of this service on *Financing a Business.*

ments, like the United States and Australia, there is usually an opportunity to choose between the different governments. For some enterprises in the United States, however, a federal charter is required; for example, a banking organization desiring to undertake national banking functions. In general the proposed organization has the choice between a state charter authorizing it to become a state bank or a national charter authorizing it to become a national bank.

In the case of an ordinary corporation desiring to engage in business of a general nature, such as manufacturing, trading, etc., it is at the present time necessary to secure a charter from some one of the individual states. In the case of banks, railways, and public service corporations, it is in practically all cases necessary to have a charter from the state in which the business of the corporation is to be located. For manufacturing and trading concerns the case is different. Ordinarily such a corporation may take out a charter either in its own state or in any one of a considerable number of states which permit the formation of corporations, to do business either within its own borders or in other states. Consequently the promoter, having the choice of a number of jurisdictions, is in a position to select that one which he considers most favorable to himself or to the future success of the corporation which he is forming. While the general provisions of the various states have a striking similarity, they differ in a number of points, which are of considerable importance to the future of a corporation.

In some states the corporation law and policy are well settled and those incorporating under the laws of such states have reason to believe that the policy observed in the past is likely to be continued in the future. Such con-

ditions attract legitimate business enterprises. The fees charged by the state for incorporating a company and for the annual license differ widely. For example, Arizona charges $10 for the incorporation of any company, without regard to the amount of its capitalization, while Connecticut charges $25 for the incorporation of a company having a capital of from $10,000 to $50,000, and $1 for every $2,000 of capital stock authorized of $50,000 or more. The rate in New York is the same as that of Connecticut. New Jersey has a more liberal policy than Connecticut, but much more conservative than Arizona. The New Jersey rates are $25 for any corporation up to $100,000, and for corporations above this amount 20 cents for every $1,000 of the total amount of capital stock authorized. Maine, formerly one of the more conservative states, has recently entered upon a policy of granting charters upon favorable terms and requires a fee of $10 for $10,000 capitalization, $50 for a corporation from $25,000 to $500,000, inclusive; and for corporations above $500,000, $10 for every $100,000 of capital stock.

The states differ considerably in regard to the liberality of the charter. Some limit the amount of capital stock that may be issued; some require that the directors' and stockholders' meeting shall be held within the state from which the corporation has its charter; some require that the capital stock shall be paid for in money; and some forbid corporations to own shares of stocks in other corporations. Accordingly, if a corporation desires to issue $25,000,000 worth of stock, it can not take out a New Hampshire charter, where the amount of authorized capital is limited to $5,000,000. If it wishes to hold a stockholders' meeting outside of the state, it can not take out a New Jersey charter. If it desires to

hold stock in other corporations, it can not take out an Illinois charter.

The promoters, therefore, after determining upon the character of the enterprise, select the state, having regard to the various points mentioned, choosing that which they consider most favorable to the corporation which they are forming. At the present time, New Jersey, Maine, Delaware, Arizona, Nevada, and South Dakota, and several other states, are called the leading charter-granting states on account of the lower fees and the more liberal terms granted to incorporators.

In some cases corporations take out charters in several states, for example, railways operating lines in adjoining states. Such charters are usually identical in terms, so far as practicable, and have the same stockholders and the same officers. On account of their practical identity it has become a fairly well-settled principle of law to regard such corporations as a single corporation.

The Process of Formation

Each state prescribes a routine method which must be followed under its corporation law by those who desire to take out a charter. The process is in its general details quite similar, but differs in certain particulars. For purposes of illustration, the routines prescribed by the states of Illinois and New Jersey have been selected and are given below.

The general corporation act of Illinois provides that any number of natural persons from three to seven, inclusive, desiring to form a corporation, shall file a statement with the secretary of state, giving the name of the proposed corporation, the objects for which it is formed, the amount of the capital stock, the number of shares and the value of each, its principal office and the period for

which it is to be formed, not to exceed ninety-nine years. The statement above described must be signed by each incorporator and acknowledged before some officer authorized to acknowledge deeds. This statement is then sent to the secretary of state and, if the purpose for which it is proposed to form the corporation is lawful, the said officer issues a permit authorizing the incorporators to act as commissioners to open books for the purpose of securing subscriptions to the capital stock.

After being properly authorized, the commissioners open the books to secure subscriptions for the full amount proposed in the original statement. When the full amount is subscribed, the commissioners call a meeting, giving the proper notice, for the organization of the corporation and the election of officers. The officers then collect at least one-half of the total amount subscribed and make a full report of the meeting, giving the subscription list, the amount paid in upon the same, whether any of the capital stock has been paid for in property and if so the fair cash value of the property, and the names of the directors. This report must be signed by a majority of the commissioners and filed in the office of the secretary of state. The secretary of state then issues the charter, which upon its receipt is filed in the office of the recorder of deeds of the county in which the chief office of the corporation is located. The company then is legally organized and must proceed to business within two years from the date when its charter is issued or the charter will be legally forfeited.

As compared with the Illinois method, that prescribed by the state of New Jersey in the general corporation act is exceedingly simple. Under the New Jersey law, three or more natural persons may draw up an agreement for the purpose of forming a corporation under the general

corporation act, specifying the name, the objects for which it is formed, the amount of stock, and the period for which it is formed. They may then secure subscriptions for the full amount of the capital stock, requiring each subscriber to sign his name, showing the amount for which he subscribes and his post-office address. The charter as drawn up, with its subscribers, must then be approved in the same manner as is required by law in the case of deeds for the transfer of real estate. It is then recorded in the office of the clerk of the county where the principal office of the corporation is located, and finally is filed with the secretary of state, when its legal existence begins.

The Capitalization

It will be noticed that in each case the capitalization must be determined before the corporation enters upon its legal existence. By capitalization is meant all stocks and bonds issued, or, in a more limited sense of the word, the total amount of stock authorized. The capitalization may be equal to the amount of assets which the corporation possesses or it may be greater or less than the assets. When the stocks and bonds issued by the corporation are sold at par, the amount of capitalization will be equal to the amount of assets; if they are sold above par, the assets will exceed the capitalization; and if either one or both are sold at less than par, the capitalization will exceed the assets and the stock is said to be watered or the corporation over-capitalized.

Having determined upon the operation of a particular kind of business, the promoters are in a position to decide the amount of assets which are necessary in order to carry on the business properly. Suppose, for example, it has been decided to engage in the manufacture of pianos. The

promoters ask how much capital is required to manufacture pianos at a low cost at the point where the factory is to be located. If they find themselves unable to raise the amount of capital necessary to undertake such a business in the proper way, then their project should be abandoned or the corporation should devote itself to some other business enterprise requiring a smaller amount of capital. On the other hand, it is possible to extend the field from which subscribers are originally selected and thus secure a larger amount of capital by appealing to a larger constituency.

Bonds

Assuming that the enterprise has been selected and that the promoters find themselves able to raise the necessary amount of capital, they must then decide how much of this capital should be in the form of bonds and how much in the form of stock. The bondholder is, from the broader point of view, a member of the corporation who has relinquished any right which he might have had in directing the management of the enterprise, for the sake of having his property secured by a first claim upon the assets. He receives a lower rate of return as compensation for the security he receives. Since many investors desire safety above everything else and are not in a position to take part in the management, a considerable portion of the capital of every business enterprise is borrowed. Under the corporate form of organization those who subscribe in this way hold bonds as evidence of their contributions. If bonds are issued above the value of the property upon which they are secured at a forced sale, under the most unfavorable conditions, it is usually impossible to sell them at their face value unless the rate of interest is made unduly high. Consequently those form-

ing the corporation find it desirable to borrow only a limited portion of the capital upon bonds and to make the rate of interest fairly low.

Stock

Having determined the amount that may be raised by the issue of bonds, all the remaining capital must necessarily be subscribed by the stockholders. In the issuing of stock, the simplest method is to issue one kind only, which is then called common stock. Since the stock is all alike, there is no opportunity for discrimination among classes of stockholders; all have the same rights, all take the same risks, and all share the losses and the profits equally. By subtracting the amount received from the bond issue from the total amount of capital necessary for the proper operation of the business, the amount which must be secured through subscriptions for the capital stock is determined. By dividing this amount into shares of a certain amount, for example, $100, the number of shares may be calculated and if the stock is sold at par, when all the stock is subscribed for and the subscriptions collected, the corporation will be in possession of that amount of capital which the promoters consider necessary for the particular business which it is to undertake.

SHARES OF STOCK

The capital stock of a corporation is divided into shares of equal value. The most commonly accepted value for a share is $100, though $1, $10, $25, and $50 shares are found in many industries. In some states the law puts limitations upon the value of shares that are to be issued. Some stocks, strange as it may seem, have no par value. The Great Northern Ore properties were di-

vided into 1,500,000 trustees' certificates of beneficial interest. The same system is used in the Chicago Railways Company. Dividends are divided at so much a share rather than a percentage upon the par value of a share.

A share of stock is an intangible thing. It carries with it the right to share in the management, earnings, and assets of the issuing company. Ownership is represented by certificates of stock. A stock certificate is merely a convenient evidence of the ownership of corporate shares, much in the same manner as a deed is evidence to the ownership of land.

COMMON AND PREFERRED STOCK

In recent years the practice has grown up of dividing the stock into two classes called "common" and "preferred." Preferred stock has a superior claim to the dividends or, in case of dissolution, to the assets of a corporation, or both, as may be provided in the charter. Preferred stock is thus an intermediate security between bonds and common stock. It is usually granted dividends up to a certain rate, as, for example, 7 per cent. If the corporation earns 7 per cent in excess of all other expenses upon the preferred stock only, then the holders of the preferred stock may receive the full amount of their dividends, while the common stockholders would receive no dividends at all.

Preferred stock may be either cumulative or noncumulative. Wherever preferred stock is made cumulative, all the dividends up to a specified rate become a preferred charge upon the earnings and accumulate from year to year, in case they are not paid, to the credit of the preferred stockholders. Hence if a corporation is unable to earn the rate specified on the preferred stock,

through a period of several years, and then, owing to improved conditions, it increases its earning power sufficiently to accumulate a surplus larger than is required to pay the preferred dividend of that year, the excess earnings, after the preferred dividend of that year is paid, must go to make up the dividends due the preferred stock in past years, which have been withheld owing to a lack of earnings. Only after all past due dividends on the preferred stock have been thus paid may any dividends be declared on the common stock.

Preferred stock often has the right to share with the common stock all profits beyond a certain amount. In such cases it is usual to provide that the preferred stock shall be entitled to a certain rate, usually 7 per cent; then out of the excess earnings the common stock shall be entitled to a similar amount, and the two classes of stock shall then share equally in the excess profits.

Preferred stock is sometimes issued, in which the holders have the right to elect a majority of the directors, while the common stockholders elect the minority. In such cases the real control of the corporation is by its charter entrusted to the preferred stockholders, permitting the common stockholders, however, a minority representation upon the board. Ordinarily preferred stockholders have one vote for one share, in common with all shareholders. Sometimes preferred stockholders have no voting rights so long as the dividends specified in their stock are regularly paid; but if, for any reason, the directors representing the common stock are unable to pay such dividends, then automatically the election of directors passes over into the hands of the preferred stockholders and remains in their power until the dividends upon the preferred stock have been paid regularly for the period of time specified in the charter.

Preferred stock is sometimes further divided into classes, as, for example, first preferred and second preferred. In such cases the first preferred shares have prior rights over the second preferred and usually are granted a lower rate of dividends, on account of the fact that they have the first right to dividends and the first right to a share in the assets in case the corporation is dissolved.

Thus where a corporation is organized with bonds and two classes of preferred stock, the security holders are divided into four classes, each having its own special rights and privileges, as provided in the charter and by-laws, the bonds taking precedence over the first preferred stock in point of security, but ordinarily having no rights in management, the common stock taking precedence over all the other securities in the right of management, but coming after all the others in its right to share in the earnings and the assets.

Where preferred stock is issued it is desirable to make the bond issue relatively small and thus make the preferred stock take the place of certain of the bonds of a less desirable character, giving them at the same time the right to vote for the directors. Preferred stock resembles very closely the income bond with voting power, especially where the stock possesses cumulative rights. Under any circumstances, the total amount of preferred stock plus the bonds ought not to exceed the value of the tangible assets. Consequently the larger the bond issue, the less the preferred stock, and the less the bond issue the larger the amount of preferred stock which may be properly issued. Under such circumstances the preferred stock becomes a high-class security, giving a fairly large rate of earning and permitting the holders to take part in the election of directors. Such securities

are dependent upon the earning power of the corporation for their dividends and therefore must always partake more or less of the speculative characteristics.

Wherever bonds and preferred stock have been issued, the common stock represents a contingent interest in the corporation, and the holders of such securities are in a position to receive all of the profits over and above what is necessary to pay interest on the bonds and the specified rate of interest upon the preferred stock. If the earnings of the corporation are small, the preferred stockholders are unable to receive their full rate of the dividends and in certain cases may receive no dividends at all. If the earnings are large, the preferred stockholders can receive under any circumstances only the specified rate, and all the excess earnings go to the common stockholders.

Consequently the amount of common stock issued is not a matter of great economic importance. The value of the common stock must, of course, equal the total assets less the amount of preferred stock, the bonds, and other prior obligations. This is best shown by the following balance sheet:

BALANCE SHEET—CORPORATION A

Assets		Liabilities	
Plant, machinery, etc.	$10,000,000	Accounts	$ 1,000,000
		Bonds	4,000,000
		Preferred stock	3,000,000
		Common stock	2,000,000
	$10,000,000		$10,000,000

The $2,000,000, which is the value of the common stock, may be represented either by 20,000 shares at $100 each or by 2,000,000 shares at one dollar each. To represent the $2,000,000 worth of common stock it is also possible

to issue 100,000 shares and call each share worth $100. In such a case the par value of the stock would be $100. Its value, however, determined from the assets, is only $20 per share, and in a market where values were properly adjusted it would be selling at about that figure. This process of inflating the common stock issue may have any one or all of the following results: First, it may deceive prospective purchasers as to the real value of the property. In drawing up a balance sheet it is unusual to disclose the real facts and place the common stock at $20 per share. The common practice is to list the common stock at its full value and inflate the asset account by a fictitious entry in order to make the accounts balance. This is represented in the following balance sheet:

BALANCE SHEET—CORPORATION B

Assets		Liabilities	
Plant, machinery	$10,000,000	Accounts	$ 1,000,000
Good-will	8,000,000	Bonds	4,000,000
		Preferred stock	3,000,000
		Common stock (100,000 shares @ $100)	10,000,000
	$18,000,000		$18,000,000

Instead of inserting the amount under its own title as above, under the heading of "Good-Will," it is also common to include the amount with the plant and machinery and call the whole, "Plant, machinery, etc," as shown in the following:

BALANCE SHEET—CORPORATION C

Assets		Liabilities	
Plant, machinery, etc	$18,000,000	Accounts	$ 1,000,000
		Bonds	4,000,000
		Preferred stock	3,000,000
		Common stock (100,000 shares @ $100)	10,000,000
	$18,000,000		$18,000,000

The proper method of stating the condition is to show the stock, bonds, etc., at their full value, and list all the assets at their real valuation, and if the assets are less than the liabilities, insert the amount under the title of "Deficit," showing the exact status. This is shown in the following:

BALANCE SHEET—CORPORATION D

Assets		Liabilities	
Plant, machinery	$10,000,000	Accounts	$ 1,000,000
Deficit	8,000,000	Bonds	4,000,000
		Preferred stock	3,000,000
		Common stock (100,000 shares @ $100)	10,000,000
	$18,000,000		$18,000,000

If the assets exceed the liabilities, then there is a surplus which belongs to the stockholders and, under ordinary circumstances, to the common stockholders. This condition is shown in the following:

BALANCE SHEET—CORPORATION E

Assets		Liabilities	
Plant, machinery	$10,000,000	Accounts	$ 1,000,000
		Bonds	4,000,000
		Preferred stock	3,000,000
		Common stock (10,000 shares @ $100)	1,000,000
		Surplus	1,000,000
	$10,000,000		$10,000,000

It will be seen from the above that, while the par value of the stock issued has no effect upon the assets of the company and therefore none upon the real value of the stock, it is likely that the issuing of stock in excess of the assets may lead directors to adopt the policy of inflating the assets and thus deceive prospective investors who have no means of knowing the real condition of affairs

and unwisely estimate the value of the stock from the reports of the company.

In the second place, those in active charge of the accounts of the corporation may deceive the other stockholders of the company in exactly the same way. Those in actual control, however, knowing the true condition of affairs, are in a position to take advantage of the deception practiced upon the other stockholders, and thus by the purchase and sale of stock, add to their own income at the expense of their fellow members within the corporation.

TREASURY STOCK

Treasury stock is stock which has come back as the property of the corporation by gift, forfeiture, purchase, or some other process. While held as treasury stock such stock is not usually entitled to dividends or voting privileges. If it was originally issued as full paid, it may now be disposed of by the corporation as full paid at less than par. Such stock does not change its character as full paid and as issued stock, though it is not "outstanding."

Treasury stock is frequently used for the purpose of raising working capital. This is especially true in the promotion of mining property. Certain persons will organize a mining corporation and accept the shares of the corporation in payment of services, property, etc. Then, each person will donate a fraction of his stock to the corporation as treasury stock. This stock will then be sold at such figures as to realize the largest returns for the purpose of raising the working capital.

ISSUED AND UNISSUED STOCK

Treasury stock should be distinguished from unissued stock. The latter is stock which has been authorized by

the charter, but which has not been subscribed for. It has no intrinsic value, but exists only as a potential source of funds. Corporations are frequently capitalized at a higher figure than the immediate needs for capital demand. As more capital is required for expansion it may be issued without amendment of the charter. When stock has once been issued it can never become unissued stock again. Issued stock represents a liability of the corporation and the cash, property, or other value acquired by means of a stock issue are regarded as an equivalent asset.

FULL PAID AND NON-ASSESSABLE STOCK

A corporation is founded upon the theory that each share of stock has been paid for in full in cash or its equivalent. Consequently if the corporation has been properly organized, each share of stock as delivered has behind it its full value in real property. Upon this theory the principle of limited liability is founded and justified. Each stockholder may lose all of his investment, but may not be called upon to contribute anything in addition to satisfy the claims of creditors. Where stock has been sold at a discount, obviously the assets are less than the face value of the stock, and in case of bankruptcy, the creditors, not having the right to demand satisfaction from the individual stockholders, must rely upon the real assets of the company.

Where the assets are less than appears from their face, the creditors in many cases receive only a small percentage of the face value of their claims. Under such circumstances, when a corporation becomes bankrupt, as corporations sometimes do, the courts have held that those stockholders who have not paid in full for their stock must do so in order to satisfy the claims of the

creditors; that is, they must pay up the balance upon their stock, making it in reality full-paid. Stock is ordinarily issued as full-paid and non-assessable. Such stock is often sold at one-quarter or even a less part of its face value. Under such circumstances, the majority of the stockholders cannot by vote assess the stock in the corporation.

Where a corporation becomes bankrupt, however, and it is found that the stock was wholly or partially given away, it is entirely proper that the courts should assess the stockholders for their unpaid portion of the stock. Under such circumstances the liability of the stockholder is limited to the face value of his stock; but on the other hand, it is equal to the face value of the same. The method which has been practiced so much in the last few years of giving the common stock as a bonus with the issues of preferred stock has tended to make the principle of limited liability a means by which honest creditors have been cheated out of their rights.

Registrars and Transfer Agents

Registrars and transfer agents are so commonly associated with the formation and promotion of corporations that their functions should be briefly described in this connection. Corporations at the present time usually endeavor to reassure the public of the value of their securities by appointing reputable trust companies to act as registrars and transfer agents for their stock. The use of a well-known and reputable trust company in this connection guarantees that the stock issued is regular, that the reputations of the directors and the managers of the corporation are good, and that, in general, financial experts are willing to back the enterprise. Most of the large stock exchanges, including the New York ex-

change, will not list the stock of a corporation unless it has been signed by a trust company or other reputable financial agency as registrar. The employment, therefore, of these agencies greatly facilitates the marketing of stock for business enterprises. It is evident, of course, that the better the reputation of the trust company, the greater the advantage from such registration.

It is desirable that the duties of these officers and their relation to the corporation be very clearly defined. The relationship of principal and agent exists between the corporation and these agents and, for the purpose of definitely fixing responsibility, all corporations should define this relationship in unequivocally clear terms. The specific duty of the transfer agent is to make the transfers of the stock of a corporation and to satisfy himself of their regularity and freedom from fraud. The registrar signs the new certificates of stock presented by the transfer agent as evidence that everything has been transacted in regular order.

This relationship between the transfer agent and the registrar is such that the two agencies should be absolutely separate and independent of each other in order to secure the fullest degree of responsibility. Unless such independent relationship exists and unless the registrar is presented with definite evidence in each case of the legality and regularity of an issue, the advantage which clearly exists in the use of such agents may be largely lost.

The Books of a Corporation

In addition to the ordinary accounting books, which, of course, vary according to the nature of a business, the following auxiliary books are used to record properly the transactions of a corporation:

1. Minute book
2. Subscription book
3. Installment book
4. Installment scrip book
5. Stock certificate book
6. Stock ledger
7. Stock transfer book
8. Dividend book

The minute book of a corporation contains a record of what is done at the meetings of the stockholders and of the board of directors, although in some cases separate books are kept for the meetings of each. The minute book is ordinarily a simple blank record book. A copy of the company's charter or certificate of incorporation is usually entered on the first pages. Then come the by-laws of the company. These documents are either transcribed into the book and certified as to their accuracy or else are pasted in from printed copies. The minute book is usually kept by the secretary of the corporation.

The record should be as concise and accurate as possible and all motions should be so worded as to avoid ambiguity or misinterpretation, since the minutes are the legal evidence of the proceedings of the meetings and for all actions taken thereat.

The subscription book is used to record the subscriptions of stockholders. It serves as a contract with the subscribers for the amount of stock for which each has subscribed. The book should contain the name of each subscriber, his address, the number of shares which he agrees to take, and the date of the subscription. It usually consists of nothing more than the ordinary subscription list.

The installment book records the payment of each installment due on subscriptions. It contains the name of

each subscriber with the amount paid on each installment. A separate record is kept for each payment. The first column contains the subscribers' names arranged alphabetically. The second column is used for the ledger folio. The third column contains the number of shares subscribed for. The fourth column contains the amount of the installment. The fifth column contains interest due on delinquent payments. The sixth column contains the amount paid. The seventh column contains the date of payment.

The installment scrip book is a receipt book for installments paid by stockholders. The scrip or certificates of this book are issued as installments are paid and the stub is retained by the secretary as evidence of such payment. When all the installments have been paid, these receipts are surrendered to the secretary and the regular stock certificates are issued to the subscribers. Needless to say, the installment book and the installment scrip book are used only when stocks are to be paid for on the installment plan.

Stock certificates are issued from the stock certificate book, which consists of blank stock certificates numbered in serial order and each with its corresponding stub. No new certificates should be issued upon any shares until the old certificate has been surrendered and properly canceled. In smaller corporations the stock certificate book is frequently the only stock book maintained.

The stock ledger or stock book is used to keep an accurate record of the stockholders and the stock held by each. It usually shows in alphabetical order the names and addresses of stockholders on record, the amount of stock held, from whom and when acquired, and, if any of the stock has been disposed of, to whom and when.

Finally it shows the balance of stock at any time to the credit of the stockholder.

The transfer book contains a record of the transfers of stock and also the actual instruments of assignment by which these transfers were made. The transferee or his duly authorized agent signs for the transaction. These items are then posted to the stock ledger and form the basis of the entries in that book. A form of assignment is generally printed on the back of stock certificates. The transfer books are usually closed to transfers a certain number of days before the annual meeting of stockholders and before a dividend period. This is to obviate any uncertainty as to who is to participate in either.

When a stock certificate has been transferred by endorsement, the transferee does not become the owner of such stock in the eyes of the corporation until the transfer has been duly recorded upon the stock books of the corporation. Until that is done the original owner continues to be the owner of record and will be held for stockholder's liabilities as any other stockholder. The original owner's right to dividends is qualified; while he receives the dividends from the corporation he must account to the person possessing the duly assigned stock certificate for these dividends. He also has recourse to his assignee for any payments he may be compelled to make upon this stock.

The dividend book is used for the purpose of recording each dividend declared and paid. It contains a record of each dividend, the number of shares held by each stockholder, the amount of dividends paid thereon, and the signature of the stockholder as a receipt for his dividend. In many corporations dividend checks and vouchers take the place of this book.

The Corporation Calendar

The calendar of a corporation is a book, a card, or memoranda used as a reminder of those formal matters of the corporation's business that must be attended to at regular and stated times. The secretary should have a system for calling his attention automatically to formal matters of this kind. All of this information should be arranged in chronological order.

Upon such a calendar should be recorded matters that pertain to the regular corporate procedure—stockholders' meetings, notices of stockholders' meetings, directors' meetings, notices of directors' meetings, dividend notices, close of transfer books, etc.; matters that pertain to the relationship of the corporation to the state—listing property for city, county, state, and national taxation, franchise taxes, income taxes, dates of annual and special reports to the different departments, branches, and bureaus of local, state, and national government; and memoranda of a similar nature requiring regular attention.

In order to prepare such a calendar, it is necessary to consult the charter and by-laws of the corporation, municipal ordinances, state and federal laws, the rulings and decisions of courts and administrative bodies affecting the affairs of the corporation, and similar sources of information. A serviceable calendar of this kind is the product of a great deal of thought and of the accumulated experiences of the past which have been definitely preserved in written records for this use. Space should always be reserved for inserting any new items that come to the attention of those concerned.

The form of such a calendar may be somewhat as outlined in the following illustration:

CORPORATE CALENDAR OF THE ———— COMPANY
1915

January—
- 2—Directors' meeting.
- 5—Close transfer books for annual stockholders' meeting on January 30.
- 10—Notify stockholders of annual meeting on January 30.
- 12—Payment of quarterly dividend.
- 22—Prepare annual report for the State Public Utilities Commission before January 31.
- 30—Annual meeting of stockholders.
- 31—Forward annual report to Public Utilities Commission.

February—
- 1—Mail notices of directors' meeting February 5.
- 5—Directors' meeting.
- 15—Prepare schedule for federal income tax; last day to file March 1.
- 20—Prepare for listing property for state and local taxation March 1.

March—
- 1—Last day for listing income tax; list state and local taxes.
- 2—Mail notices of directors' meeting on March 6.
- 6—Directors' meeting.
- 31—Mail notices of directors' meeting on April 4.

April—
- 4—Directors' meeting.
- 11—Payment of quarterly dividend.
- 21—Taxes must be paid within ten days.

May—
- 1—Last day for paying taxes.
- 2—Mail notices of directors' meeting on May 7.
- 7—Directors' meeting.
- 30—Decoration Day, legal holiday.

June—

1—Mail notices of directors' meeting.
5—Directors' meeting.
10—Board of Tax Review meets June 20.
20—Meeting of Board of Tax Review.

Etc.

TEST QUESTIONS

1. What functions does the promoter perform in the organization of business enterprises?
2. What are the legal responsibilities of a promoter?
3. What tests would you apply in choosing a state for incorporation? Why would you be exceedingly careful in choosing a so-called "liberal" state for this purpose?
4. Upon what principles would you determine the amount of capitalization?
5. What is meant by a share of stock? a stock certificate?
6. What is the distinction between common and preferred stock? issued and unissued stock?
7. What is "watered" stock? What are its results?
8. What is meant by treasury stock? How is it acquired?
9. When is stock full-paid and non-assessable?
10. What are the functions of a registrar? a transfer agent?
11. What is meant by each of the following: Minute book, subscription book, installment book, installment scrip book, stock certificate book, stockholder stock transfer book, dividend book?
12. What is a corporation calendar? Do you use it in connection with your own business?

CHAPTER VI

THE CHARTER

Its Main Features

In choosing a state under which the corporation is to be formed, the promoters at the same time determine the fundamental legal conditions under which the corporation is to operate. The general corporation act in each state and in some cases the state constitutions not only formulate the more important of these conditions, but universally require the incorporators to draw up and adopt a formal instrument under which the incorporators unite to form the corporation. Such an instrument is called the "charter" or "certificate of incorporation" or sometimes the "articles of incorporation."

The charter is usually drawn up by the original promoters and at the proper time is presented to the proper authorities for their approval. Wherever charters are granted by the special act of some legislature they are likely to be more extensive and more specific. Wherever they are taken out under a general corporation act, they are often comparatively brief, since the corporation law outlines many conditions that would otherwise be provided for in the charter. In all cases they include a brief statement on at least the following points:

1. Name of the corporation.
2. Objects or purposes for which it is organized.
3. Amount of capital stock, classes into which it is divided, and the rights of each class.

4. The number of shares into which the capital stock is divided and the par value of each.

5. The location of its principal office.

6. The term for which it is formed, either for a period of years or in perpetuity.

7. The names and post-office addresses of the incorporators.

8. The number of directors and often the names of those to serve the first year.

NAME OF THE CORPORATION

The choice of a name for the corporation is left to the incorporators with one condition, namely, that they may not select a name already in use by a corporation of the same state already in existence.

It is desirable to select a name that indicates the nature of the business which the corporation is to undertake, as The ———— Motor Car Company, The ———— Carbide Company. In some cases the title is chosen to perpetuate the name of some man who has become distinguished for his technical or business ability, as the Westinghouse Manufacturing Company. In other cases the name is chosen to continue the name of a partnership which has been converted into a corporation, as the Thompson-Houston Company. In all cases, since the name may become an asset of importance as the reputation of the corporation becomes established, it is desirable to select one that is short and that is likely to call the attention of those who see it to the business which the corporation is carrying on.

THE OBJECT OR PURPOSE OF THE CORPORATION

While the individual and the partnership may in general undertake any business not forbidden by law, the

corporation is required to name the objects for which it is formed and confine itself rather narrowly to the objects or purposes specified in its charter. Hence it is necessary to state such objects at considerable length. When, however, the business to be undertaken is fairly limited in its character, the object clause may be comparatively brief. The following is a good illustration of the object clause of a manufacturing company formed for the purpose of making a particular line of machinery.

The purposes for which said corporation is formed are as follows:

1. To buy, sell, manufacture and generally deal in all manner of tools, machinery, devices, appliances and supplies used in the cooper's trade.

2. To lease, buy, sell, use and hold all such property, real or personal, as may be necessary or convenient in connection with the said business.

3. To do any or all things set forth in this certificate as objects, purposes, powers or otherwise, to the same extent and as fully as natural persons might do, and in any part of the world.[1]

In cases where the business to be conducted is extensive, it is desirable to include in the purposes for which the corporation is formed a clause sufficiently broad that the legitimate activities of the corporation may not be unduly hampered. For example, the United States Steel Corporation is engaged in practically all kinds of manufacturing connected with the iron and steel industry. In order that it might be authorized to conduct its business properly, the object clause in its charter contains eleven paragraphs, each of which is a grant of extensive powers in itself. At the end of the last clause, for fear some of its proposed activities might be prevented for lack of authority, the following paragraph is added:

[1] Conyngton, *Corporation Management*, page 170.

To do any and all other acts and things and to exercise any and all other powers which a copartnership or natural person could do and exercise and which now or hereafter may be authorized by law.[2]

THE CAPITAL STOCK

The provisions in regard to the capital stock may be exceedingly brief or they may be treated at considerable length in the charter. In the former case the detailed specifications are reserved for the by-laws. Where a corporation is essentially private in its nature, that is, where practically all its stockholders are directly interested in its management, it is proper to make the clause relating to the capital stock brief, specifying merely the amount authorized, the number of shares, and the par value of each.

In cases where the corporation is composed of a large number of widely scattered stockholders, the clauses relating to the capital stock should be full and explicit. That of the United States Steel Corporation, for example, not only includes all of the usual provisions, but contains elaborate regulations in regard to the payment of dividends and the distribution of the assets in case the corporation is dissolved. The chief object in stating the rights of the stockholders in the charter rather than in the by-laws is to prevent the majority interests from unduly interfering with the rights of the minority.

It is usual to provide that the charter may be amended only with the consent of a two-thirds or a three-fourths majority, whereas the by-laws can ordinarily be altered by a bare majority and sometimes even by a vote of the directors. Consequently the rights formulated in the charter are likely to be less easily changed and thus more permanent.

[2] Charter of United States Steel Corporation, Section III.

OTHER ESSENTIAL FEATURES

The location of the principal offices and the names and addresses of the incorporators and directors are required by the statute law quite generally in order that processes may be served and that those responsible for the promotion of the enterprise may be held accountable to the proper state officers for any breach of the law. The location of the principal office does not necessarily mean the chief operating office. Jersey City, for example, contains the domicile of a large number of New Jersey corporations whose principal places of manufacturing are in Pittsburg and Chicago, and the incorporators may be, and often are, succeeded by the real power behind the throne, as in the case of the United States Shipbuilding Company, as soon as the preliminary stages in the organization are concluded.

Some states permit corporations to be incorporated in perpetuity; others for a limited term only. In the latter case provision is usually made in the corporation act for a continuation of the corporate existence of the enterprise at the expiration of the term for which it is formed, by some formal action on the part of the stockholders.

In the celebrated case of Dartmouth College v. the State of New Hampshire, decided in 1818, a charter was held to be a contract between the state granting it and the incorporators and their legal successors. Hence a charter granted in perpetuity cannot be terminated by action of the state. Accordingly certain charters granted in the early part of the last century, possessing wide powers of doing business, have become exceedingly valuable, and some of these have been obtained and used for purposes quite different from those for which they were originally obtained. As a result of the decision of the Supreme Court in the Dartmouth College case, legisla-

tures of the various states, in granting special charters and in their laws for the incorporation of companies under general acts, have quite generally provided that such charters may be terminated by the legislatures whenever in the opinion of such authority the public interests seem to make such action desirable.

In addition to the above clauses, which are called the essential features of a corporate charter, it is common in the larger corporations to insert paragraphs regulating, and sometimes limiting, the powers of the directorate. It is, for example, not unusual to specify the number of directors and to provide for their classification into groups, each group serving for a period of years; to regulate the method of electing officers and filling vacancies; to authorize the appointment of committees and fix their duties; to allow the directors to fix the working capital; to use the earnings in declaring dividends or for improving the property, as their judgment directs; to authorize the corporation to hold stock in other corporations; and to require that bonds or mortgages constituting a prior obligation upon any particular class of securities in existence must be approved by a specified majority of the votes of the various classes affected, before such change may go into effect.

The charter thus formulates the fundamental principles upon which a corporation is organized. In all cases it is, however, subordinate to the corporation law of the state under which the company is incorporated. Its provisions serve to carry out and extend the provisions of the corporation law rather than to limit or change them.

TEST QUESTIONS

1. What is meant by the charter of a corporation?
2. What are the eight main divisions of a charter?
3. Why is it important to be very particular about the statement of the object and purpose of the corporation? Have you consulted the forms at the close of this book in regard to the object clauses?
4. What is the value of general words following a specific enumeration of powers in an object class?
5. What factors should you bear in mind in choosing the name of a corporation?
6. What point did the Dartmouth College case decide with respect to the charter of a corporation?
7. How do the anti-trust laws of the federal government and of the several states affect the charter powers of a corporation?

CHAPTER VII

THE BY-LAWS

Their Essential Features

The charter is expected to provide for those features in a corporate organization which, by their nature, are intended to be fairly permanent. It is formulated at the beginning of the corporate existence of the enterprise and is ordinarily difficult of amendment.

The by-laws, on the contrary, are designed to provide the regulations under which the corporation is managed. The charter thus may be compared to the constitution of a state, while the by-laws resemble the statute law. The by-laws are always subordinate to the charter provisions and should be considered as a supplement to that document. If the charter is full and explicit upon any point, that topic may be omitted in the by-laws. If the charter fails to make provision for any feature essential to the proper organization and conduct of the corporation, such feature should be covered by the by-laws. In general, the by-laws provide fairly specific rules and regulations in regard to the following subjects:

1. The stock
2. The stockholders
3. The directors
4. The officers
5. The dividends and finances
6. The amendments

THE STOCK

It is usual to provide in the by-laws that certificates of stock shall be issued to the stockholders and to require

that such documents be signed by the president and treasurer and sealed by the secretary with the corporate seal; that a complete record of the issue of such certificates shall be kept and that transfers of stock shall be made only on the books of the company; that old certificates must be surrendered and cancelled before new ones are issued to take their place. It is also usual to require the stock book to be closed for a short period, for example, twenty days, before the general elections and for a shorter period before dividend days. It is also desirable to make provisions concerning treasury stock and usually directors are forbidden to vote or pay dividends on such shares.

The object of the stock provisions in the by-laws is to enable the management and stockholders to know who hold the various shares of stock, in order that notices of meetings may be sent or in order that proposed plans of corporate policy may be presented to them before the meetings are called; to prevent fraudulent issue of certificates and to lessen the speculative purchases of stock just before dividend days; and finally, to make it difficult to control the election of directors by purchasing stock immediately before election, holding it for purposes of voting upon it during the election, and, when the election is over, selling the same.

THE STOCKHOLDERS

The time and place of the annual meeting is always provided for in the by-laws, and it is also customary to specify that a notice of such meeting shall be sent by the secretary to each member a sufficient time in advance to give all stockholders an opportunity to attend the meeting if they so desire. The election of directors and the reports of officers are usually required at the annual

meeting. It is usual by statute law to allow voting by proxy; wherever such is not the case it is common to authorize this method of voting in the by-laws. Special meetings of the stockholders are also provided for under this section. Such meetings may be called ordinarily either by a resolution of the board of directors or on request of a representative number of the stockholders. In addition to this the number required for a quorum is stated and the order of business which is followed in the various meetings is outlined.

THE DIRECTORS

The corporation law of all the states requires that the business of the corporation shall be managed by a board of directors. In the by-laws the number of such directors is fixed, if not already provided for in the charter, and in addition, their qualifications, method of election, term of office, and method of filling vacancies are stated. It is also customary to require regular meetings of the board and to provide for special meetings whenever the business of the corporation requires. In this section the quorum is stated and the method of electing officers is given in detail. In the larger corporations the board of directors is authorized to appoint various committees to take charge of the business of the board while the board is not in session. For example, the United States Steel Corporation originally had two such standing committees—the executive committee and the finance committee. These committees prepare plans for the consideration of the full board and oversee the execution of such plans after they are adopted. The committee system is an essential feature of corporate organization for those corporations having a large number of directors

and for those where the directors live at a considerable distance from each other.

THE OFFICERS

The corporation acts of the various states generally require that the following officers shall be elected, namely, a president, a secretary, and a treasurer. It is usual to provide that such officers may be chosen by the directors or by the stockholders, as the by-laws direct. The president must ordinarily be a director; the other officers may or may not be directors. The corporation act also provides that such other officers may be chosen as the by-laws specify. Consequently it is necessary to provide in the by-laws for the complete official organization of the corporation, to determine the method by which the officers shall be elected, and to give an outline at least of the duties of the official staff.

In addition to the officers which are required by law, it is common in the larger corporations to appoint one or more vice-presidents, a general manager, and a chief counsel. Where one vice-president only is appointed, such officer generally acts as an assistant to the president. Where several are appointed, it is common to divide the work of the corporation into departments and give each vice-president general supervision over one of these. The president in such cases becomes the general supervising officer, but without specific duties in any department. The president, as the name signifies, is ordinarily the chief officer of both the stockholders and the directors. His duties as outlined in the by-laws are to preside at all the meetings of both these organizations when he is able to be present. He is generally authorized also to sign all stock certificates, all important contracts, all deeds, and such other papers as are deemed of sufficient importance

to need the approval of the chief executive. It is customary also to provide in the by-laws that he shall make a complete annual report to the directors and present the same at the annual meeting of the stockholders. He is usually made, ex officio, a member of all important committees and is ordinarily the chief executive officer for the entire corporation.

Some of the larger corporations have introduced a new officer called the "chairman of the board," and assign to him a portion of the president's duties. The chairman of the board presides at the meetings of the board of directors, while the president retains his former place as presiding officer at the stockholders' meetings. The chairman thus takes on the more important and more dignified duties of the president, and as a matter of fact is usually a former president who has been relieved of certain active duties of his office and becomes a somewhat ornamental head of the corporation, the president meanwhile retaining the more active duties of the president's office.

The secretary is one of the necessary officers of a corporation, so necessary in fact that the corporation laws of the several states require the appointment of such an officer and specify the more important duties that he is to perform. The New Jersey law, for example, provides that "the secretary shall be sworn to the faithful discharge of his duty, he shall record all the votes of the corporation and directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him." In the by-laws of the United States Steel Corporation, other duties assigned to the secretary are as follows: He is required to keep the minutes of the meetings of the board of directors and of the stockholders; to serve all notices for the company; to sign with

the president all contracts authorized by the board of directors or the finance committee and to affix the seal of the company to the same; to have charge of the certificate books and transfer books, the stock ledgers, and such other books as the directors or the finance committee may direct, and keep them open for inspection by the proper officers during business hours; and in general to perform the duties incident to his office, subject to the control of the directors and the finance committee. In the larger companies the secretary has one or more assistants, whose duties are assigned in the by-laws or determined by order of the board of directors.

A third officer generally required by the corporation act in all of the states is the treasurer. In the New Jersey code the only provision made in regard to this officer is that a treasurer shall be chosen and that he shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the by-laws may require. The by-laws must then provide for the treasurer's bond, and in addition it is usual to give an outline of his more important duties. His chief function, of course, is to have oversight of all the moneys and securities belonging to the corporation. He keeps his own books and in some cases he has entire charge of the books of the company. Ordinarily certain papers and documents of an important financial character require his signature, such, for example, as stock certificates, bills of exchange, promissory notes, receipts, vouchers for payments made to the company; he may also be authorized to sign checks, sometimes alone and sometimes in conjunction with another officer designated for this purpose. In all of his duties it is usual to prescribe in the by-laws that he shall be subject to the control of the board of directors and shall keep his books and accounts open to

the inspection of those authorized to see the same during business hours. In the larger corporations, like the secretary, he has one or more assistant treasurers acting under his immediate direction.

Such other officers are provided for in the by-laws as the conditions of each corporation seem to warrant. The two most important of such are the general counsel and the auditor. The general counsel is, as the name indicates, the chief legal officer of the corporation. All matters concerning the laws under which the corporation is organized and conducted are, by the by-laws, entrusted to his immediate care. In the case of railways and certain large business corporations the chief counsel is assisted by a staff of assistant solicitors.

The auditor is one of those indispensable officers whose real value has only recently been recognized in business organization and management. Until recently, all the work of the auditor has been subdivided among the secretary, the treasurer, and the head bookkeeper. Within the last quarter of a century, however, the complexity of the modern business organizations has made necessary not only more elaborate accounts, but also their concentration in a general office especially created for that purpose, controlling and unifying all of the accounts. Consequently in many of the more complex business organizations the auditor is provided for in the by-laws and his duties are there specified. Wherever such an office exists, the holder of it is authorized in the by-laws to take charge of all the accounts of the company, subject, of course, to the general directions of the board. He has a staff of assistants, whose duties are arranged by the directors, subject to his personal direction.

In the smaller corporations the president, by virtue of his office, usually occupies the position of general man-

ager. In the medium-sized ones it is common to delegate a portion of his duties to the general manager. In such cases the by-laws give the latter a certain independence of position by specifying that he shall, under the supervision of the board of directors and the president, have charge of managing the active business operations of the corporation. In the larger companies, however, the duties of the general manager, as previously stated, are usually divided up and entrusted to several officers, who are generally designated as vice-presidents in charge of the various departments created by order of the board of directors.

DIVIDENDS AND FINANCE

The distinguishing characteristic of the business corporation as compared with a municipal or a social corporation is that it exists to earn profits and to declare the same in the form of dividends. It is possible, however, to declare what may erroneously be called dividends out of the capital assets and thus impair the future earning capacity of the corporation. On the other hand, it is possible to declare no dividends at all, where a corporation is earning a reasonable rate of profit, by keeping the surplus earnings and reinvesting the same in the property or in other industrial undertakings. It is considered desirable to formulate a dividend policy for the organization in some of the formal documents connected with its organization.

Formerly the states in their corporation laws exercised very little supervision over the matter of dividends of a corporation. Owing to the development of certain evils, such, for example, as stock speculation by the directors or wasting the assets for the purpose of defrauding the creditors, it is common to provide in the general cor-

poration act that dividends may be paid only out of the earnings and that the directors shall be jointly and severally liable for dividends paid out of the capital assets. On the other hand, some states provide that, unless otherwise authorized by the majority of the stockholders in the articles of incorporation or in the by-laws, the directors must annually declare in dividends the surplus profits over and above the working capital fixed by vote of the stockholders.

It is required in some cases and desirable in all that a dividend policy within the limits fixed by statute law shall be definitely formulated and stated in the by-laws if not in the charter. It is then customary to specify that dividends shall be paid only out of the surplus profits of the corporation. It is also common to permit the directors to fix the amount of the working capital and in some cases to determine whether the earnings shall be declared in dividends or used to improve the property. In the ordinary meaning of the word, dividends include payments in money only. The so-called stock dividends are in reality an increase of the capital stock distributed to the stockholders pro rata as a gift or to represent accumulated earnings or sold at less than their real value. Furthermore, it is customary to provide that the dividends be declared annually or semi-annually rather than at times chosen in some haphazard way.

It is difficult to arrange for all of the above matters in advance since the rate of earnings must always be somewhat uncertain and consequently any such regulation in the by-laws is likely to be an expression of policy rather than a fixed rule.

The amount of working capital or reserve is ordinarily fixed by the directors. Under the New Jersey law express authority must be granted them in the charter or

by-laws in order that this policy may be legally followed. By varying the amount of the working capital, it will be noticed that the surplus available for dividends can be controlled at will. Consequently the by-laws of some companies provide that the working capital shall be fixed at a certain percentage of the total assets. Under such circumstances it becomes necessary to declare the remainder of the surplus earnings in dividends at regular periods.

While ordinarily the financial affairs of a corporation are entirely subject to the control of the board, it is common to specify that the cash of the company be kept in some conservative bank and that all payments on behalf of the company be made by check, duly signed by the proper officers, usually the president and the secretary. It is also common to provide in this formal way that all debts contracted above a certain specified sum shall be duly authorized by a majority vote of the board of directors. The object of this is to hold the directors responsible to the stockholders whenever they unduly increase the obligations of the company.

AMENDMENTS TO THE BY-LAWS

The by-laws should contain a clause providing for their own amendment under such conditions that the will of the corporation, expressed through its majority, is likely to be effected. In Illinois, where the statute provides that the by-laws shall be made and amended by the directors, the amendment clause in well-managed corporations contains the following provisions: That proper notice of a proposed amendment must be given by the officers and that the changes proposed shall go into effect only when considered by the board at some regular meeting and approved by a specified majority.

In states like New Jersey, where the ultimate control over the by-laws is entrusted to the stockholders or where this power may by the charter be given to the directors, subject to final alteration by the stockholders, the amendment clause should state the conditions under which the directors may exercise their power of amendment and the methods by which the stockholders may exercise their superior right to alter or veto such acts.

Where the right is retained by the stockholders, the method of amendment should be given at length and should provide for full notice of the amendments and for the formal approval of at least a majority of the stockholders at a regular meeting or a meeting called for the purpose of considering the amendment, in order that such amendments be made a part of the rules under which the corporation operates.

Resolutions

The formal matters regulating the interior government of a corporation, the methods of procedure, and rights and duties of officers and directors are usually contained in the by-laws. Many less formal matters are, however, disposed of by means of resolutions. These motions usually do not affect permanent relations of vital importance. They usually affect only particular acts or occasions, such, for example, as calling a special meeting of the board of directors. Instructions to the officers and agents of a corporation on particular questions of administrative policy are likewise usually embodied in resolutions rather than by-laws. In general, therefore, resolutions control matters of minor importance.

TEST QUESTIONS

1. What is the nature of the by-laws of a corporation?
2. What six important topics are usually included under the by-laws?
3. What provisions do they usually contain with regard to stock?
4. What do the by-laws usually provide in regard to the duties of the president?
5. What officers are usually required under the corporation laws of the different states?
6. What provisions are included in the by-laws concerning the dividend policy of a corporation? What evils do they attempt to hit?
7. By whom may the by-laws be amended? under what regulations?
8. Distinguish between the by-laws and the resolutions of a corporation.

CHAPTER VIII

RIGHTS AND OBLIGATIONS OF BONDHOLDERS, STOCKHOLDERS, AND CREDITORS

From the proprietary point of view the corporation under usual conditions is made up of two groups, each having distinct rights, privileges, and liabilities. These two groups are the bondholders and the stockholders.

Rights of Bondholders

The rights of the bondholders in a corporate organization are fixed partly by statute law and partly by contract between the bondholders and the stockholders representing the corporation. In the simpler cases the bonds issued are all of one class and the bondholders enjoy equal rights and privileges. As a result, however, of the rapid growth of corporate enterprises, those companies which originally started with a simple bond issue usually have found it desirable, in the course of time, to issue additional bonds. Instead of paying up the outstanding obligations and issuing new ones in their places, it was formerly the custom to allow the bonds already issued to remain until the expiration of their period and add a second class of bonds subordinate to the former issues both in respect to the right to interest and to the assets. This process is often continued until a corporation may have many different classes of bonds, each having different rights and different privileges.

The disadvantages of this policy are obvious. The bonds issued in small lots have no standing in the general bond market and consequently the sale of succeeding

issues becomes more and more difficult. Recognizing the disadvantages of issuing bonds in driblets as the corporation needs more and more capital, the Great Northern Railway several years ago adopted the policy of authorizing a general mortgage bond issue of sufficient size to provide funds not only for the new additions to capital made necessary by the demands of a rapidly growing traffic, but also to retire the outstanding bonds as they came due from year to year. This change in policy has been generally approved by the bond market. Since the Great Northern Railway Company made the innovation, many other important railway corporations have followed in its lead. Consequently the smaller and less known issues of bonds are gradually disappearing and large issues of general mortgage bonds are taking their place.

In general, without regard to the different classes of bonds, the holders of the same have two fundamental rights: (1) to receive a fixed rate of interest during the period which the bond runs; and (2) to receive the face value of the bond, or the face value plus a premium under certain conditions, when the term of the bond ends or the corporation is dissolved. In addition the bondholders have certain privileges through which they are enabled to enforce their property rights: (1) to have the business managed in their interest if, for any reason, the rate of interest specified in the bond fails to be paid; (2) in common with others, to bid for the property upon which the bonds are secured in cases where, owing to the failure to pay interest charges, the corporation becomes bankrupt; (3) to reorganize themselves into a new corporation and take entire control of the property and its management where they are successful in bidding the property in at the bankrupt sale.

Bondholders are thus proprietors who have relinquished the privilege of actively directing the business in which they are interested in exchange for a first claim upon the earnings during operation and upon the assets in case of dissolution. Their contingent rights in the management of the enterprise appear in the true light whenever a corporation is, for any reason, unable to pay the specified rate of interest. The immediate result of the failure to pay the specified interest is, under normal conditions, the appointment of a receiver by the courts to represent the interests of the bondholders and to manage the property for them. If the receivership is unusually successful, the business may be turned over to the stockholders as soon as it is able to make up the deferred interest and to continue the stipulated rate for the immediate future. In ordinary cases, however, a corporate enterprise is reorganized or sold. In the first case, the bondholders remain bondholders generally with curtailed privileges or become stockholders with preferred rights; in the latter case, they often purchase the business, reorganize it themselves, and thus become the only stockholders in the new enterprise.

Where there are several classes of bonds, the respective rights of each class are fixed by the terms under which they are issued and follow in regular gradations from the highest to the lowest. Those in the lowest grade, in practically all cases, precede the highest grade stocks in the rights to the earnings and assets, and usually all classes, except the very lowest, have no direct right to participate in the management except as a result of actual bankruptcy and the consequent reorganization.

Thus stockholders in a well-organized corporation have a double motive to limit the amount of the bonds to

a sum upon which they are able to pay interest during the term of the bonds and their face at expiration: (1) as stated in a previous section, because the larger the amount of bond issue, the higher the rate of interest at which they can be sold in the open market; and (2) because in addition to paying a high rate of interest the stockholders are in danger of losing their own rights in both the assets and the future earnings whenever the business for any reason is subjected to unfavorable conditions.

Rights of Stockholders as a Body

The stockholders have certain rights which are exercised only through group action and are specified in detail in the general corporation act, the charter, and the by-laws. These rights are: (1) to amend and alter the charter and the by-laws; (2) to dissolve the corporation; (3) to elect the directors and in some cases to supervise the management of the corporation through control over the by-laws; (4) to have control over the disposition of the permanent assets of the corporation.

The charter, being the organic law under which the stockholders are united, is, almost universally, amended or changed only by their formal approval and usually by a two-thirds majority. Since by changing the charter the very nature and operations of a corporation may be entirely altered, the statute law of the various states has very properly provided that proposals for such changes must be offered some time in advance of their consideration; that due notice of such proposals must be given; and that the amendments must be approved by a large majority of stockholders before they go into legal effect. The same is true, to a somewhat more marked extent, in regard to the dissolution of the corporation. However,

successful corporations are seldom dissolved, and unsuccessful ones are often permitted to lapse through failure to pay the annual license fees and taxes.

In all cases the direct control over the corporation is exercised by the directorate. Consequently the method by which the directors are elected is ordinarily stated at length in the general corporation act. In some cases, however, the regulations concerning the election of directors are left for the charter and the by-laws. In some instances, the directors are elected as a body annually; in others they are elected in classes, each class serving for a period of years. In either case, since the stockholders have the right to elect, it is possible for them to outline the policy which they wish to have followed and secure a pledge from the successful candidates for the directorate in favor of such policy.

Where the directors are elected in classes, it always requires at least two years for the stockholders to gain control over a directorate which fails to represent them. However, whether the directors are elected annually or for a period of years, they are by the laws of the various states permitted to act upon their own judgment in the management of the corporate business. In a few cases only, stockholders have a right to supervise or approve the formal action of the board of directors. The most important of these are: (1) The permanent assets of a corporation may ordinarily be sold only on the approval of a vote of the stockholders; and (2) no mortgage or other long term obligation may ordinarily be authorized by the directors without their approval. The principle, as above stated, holds true ordinarily for each class of stockholders. Whenever a corporation is created with one class of stock only, no stock with superior rights may be issued except with the approval of the class already in

existence; and wherever there are two classes of stock provided for, no third class having superior rights may be created by the board of directors without the formal consent of both the previous classes.

The control over the management of a corporation entrusted to the stockholders, namely, the right to elect directors, to approve the sale of permanent assets, and to authorize the issue of superior obligations, is, as will be noticed, a right that belongs to the majority of the stockholders expressed by a vote in a formal meeting of the corporation. Where the majority of the stock is held by a small group of men, the minority, which under such circumstances is likely to be represented by a considerable number of small stockholders, has no recourse against such majority rule except in cases of actual fraud or dishonesty.

Rights of Stockholders as Individuals

As individuals, stockholders have additional rights, some of which depend largely upon the approval of the majority by formal action for their proper protection. The more important of these rights are: (1) to participate in all stockholders' meetings; (2) to receive certain kinds of information and, within specified limitations, to inspect the books and accounts of the company; (3) to share in the dividends declared during the life of the corporation and in the assets at its dissolution.

RIGHT OF NOTICE

In the first place each stockholder has the right to attend all regular and special meetings of the corporation and to have good and sufficient notice of the same, including the time of the meeting and the place where it is to be held. He is also entitled to have information in

regard to the character of the meeting and the business that is to be presented for his consideration. In some cases such notice may be given by advertisement in some newspaper designated by law, but usually, even where an advertisement is required, a written or printed notice must be mailed to the address of each stockholder.

RIGHT TO DISCUSSION

In the second place, each stockholder has the right to take part in the discussions at the various meetings, under the ordinary rules of parliamentary practice. He may ask for information upon the business policy and practice of the management and offer resolutions for the consideration of the stockholders, directing the management to take specific action where such action is within the scope of the stockholders' authority and advising the officers in other cases.

RIGHT TO PROXY

In the third place, each stockholder has the right, generally under statute law, to be represented by some person chosen to act in his stead when for any reason it is inconvenient or impracticable for him to attend in person. The instrument by which this right is conferred is the proxy or, more formally, a special power of attorney. Such right may be conferred for action upon a particular proposition or for a particular meeting or for all meetings within the limit of time sanctioned by the law of the state. In any of these cases the holder of the proxy may be authorized to vote upon a certain proposition in a specific way or he may be authorized to act upon his own judgment on any of the questions that legitimately come before the stockholders for their approval or rejection. Under any circumstances the stockholder may revoke the

proxy which he has granted whenever he chooses, and in many states the life of all proxies is limited by law to a term of years.

In the case of holding companies voting the stock of other corporations, a corporate proxy properly attested may be issued to some individual, who then represents the holding corporation. A directors' resolution when duly certified is an excellent form of corporate proxy. When the statutes empower the corporate officials of a holding company to vote the stock of other corporations held by them, no proxy is necessary. A certification that the officer properly represents the company is all that is required.

The proxy has its own peculiar advantages and disadvantages, which should be noticed at this point. It is obvious that it permits the stockholder to be represented without actually being present in person. This makes it practicable for Englishmen to own shares of stock in the South African diamond mines and for residents of the eastern states to invest their surplus capital in developing the industries of the western states. This is especially true of the small investor, who can take up only a few shares in a corporation. To attend the various meetings of the stockholders would entail an expense greater than the total income which he derives from his shares, and he would hardly care to invest in the stock of companies where he has legal liabilities as a shareholder, but no practical method of exercising his legal right of participating in the meetings.

The proxy, then, gives the small stockholder a cheap method of representation at all the meetings of the corporation. Like all other good things, however, it is liable to abuse. This may arise either as a result of misrepresentation by the proxy holder or through granting

the right to unsuitable representatives. In the first case, that of misrepresentation, the normal corrective would seem to lie in granting a specific proxy only. Such treatment of the evil of misrepresentation is, however, impracticable. In the first place, many matters come up for action at the various meetings that are unforeseen, and in the second place intelligent action is often possible only after a full discussion of the proposition. To tie up the delegates by specific proxies nullifies all the good that may come from full and free discussion on the part of the persons at the meeting.

Through the use of the proxy it is possible to hold a meeting of the stockholders of the largest corporation with only one person present where, for any reason, such person holds all or a majority of the proxies. It will be readily seen that in order to control the management the simplest way is to secure by solicitation, previous to the meeting, proxies representing a majority of the stock outstanding. Sometimes the struggle for proxies becomes so fierce and bitter as to resemble a civil war and to result in the overthrow of a management of long standing, as in the case of the Fish-Harriman contest for the control of the Illinois Central Railroad, in 1907.

Where a majority of the proxies are in the control of one person or in the control of a certain faction representing the board of directors, the individual stockholders at the meeting, while able to take part in the discussion, are, it will be seen, unable to influence the vote of the corporation, since such vote is entirely controlled by the person or the group holding the majority of the proxies. So complete is this control at times that even the minutes of the meeting have been prepared beforehand. The meeting itself then becomes a mere formality to give the proceedings their legal sanction.

In voting at stockholders' meetings the general rule is that each share of stock has one vote. As noticed above, however, it is sometimes provided, as in the charter of the Rock Island Company, that the shareholders of the preferred stock shall, in the election of the directors, vote independently, and may elect nine of the fifteen directors. The common stockholders elect the remainder. Such a provision virtually gives the control of the corporation into the hands of the holders of the preferred stock.

CUMULATIVE VOTING

The second variation from the usual method is found in the use of the principle of cumulative voting. In some states, as, for example, in Illinois, this method is authorized by the constitution and is therefore a right that belongs to the individual stockholder. Under the system of cumulative voting each stockholder may cast all his votes for one director or distribute his votes among several, as he pleases. The method thus insures, under any and all circumstances, that a small group of stockholders, by acting in concert, may have at least one representative on the board of directors. It is thus one of the most effective provisions against the evils of majority rule.

RIGHT TO INFORMATION

In a partnership each of the partners participates in the management and therefore has both the opportunity and the right to know all the details of the company's business. The corporation is, however, both historically and logically, a highly developed form of partnership in which the members entrust the active management to an elected board of directors. As a result of its origin, the stockholders formerly possessed the same right to complete information in regard to the corporation and its

internal affairs as was enjoyed by the partners in a firm. Each stockholder was permitted to go into the office or to the works at his pleasure. It was found, as a result of experience, that this privilege was particularly open to abuse.

In a partnership each partner is likely to devote his entire time and energy to a single business enterprise. The individual stockholder, on the other hand, is more likely to be interested in several enterprises. He may even become a competitor of himself and thus desire information in regard to business conditions and business policy of the corporations in which he is the least interested for the purpose of using such information to help those in which he is more interested. In many instances competitors have often purchased a share of stock in some rival corporation in order to gain information which, under ordinary circumstances, would be entirely beyond their power to secure.

This condition has led legislatures and courts to adopt quite a different policy from that originally pursued. In general the stockholder is permitted to examine the stock and transfer books by applying at the principal office during office hours. However, where there is good reason to believe that the party asking for such information intends to make improper use of it, the courts will not aid him by issuing the proper writ. As to the business books of the corporation, the stockholder usually has no right of inspection at all. For example, he cannot legally enforce a demand for information in regard to the purchases or sales of a company or in regard to its contracts, and the like.

He is, however, usually able to secure annual reports summarizing the income for the year and showing the financial condition of the corporation at its termination.

But such rights may often be relinquished by the stockholders, for the time being, by the insertion of clauses authorizing such action in the charter or the by-laws. As a matter of fact, owing to the insistent demand of most investors for information in regard to the financial condition of the corporations in which they hold stock, corporations appealing to the general public for funds cannot successfully for any length of time adopt a secretive business policy. Such institutions as the Standard Oil Company and the American Sugar Refining Company are apparently marked exceptions to this general rule, having been so successful under the policy of giving no information to anyone that their stockholders have made no attempt to secure even adequate annual reports.

With railroads and public service corporations the case is entirely different. By the adoption of the Interstate Commerce Law in 1887, railways doing interstate business are obliged to furnish monthly and annual statements to the Commission, and such reports are published annually in a volume called *Statistics of Railways in the United States*. The states quite generally require similar reports from local railways and other public service corporations. Some of this information is, to be sure, never published and some of it is worthless even after being printed and distributed; but on the whole the tendency is toward better and more fully summarized reports for the benefit of the individual stockholder, so that he places less and less dependence upon his own direct examination of the company's books. This is a distinct gain for legitimate business enterprises, since such information is more trustworthy and, in addition, cannot be used for the purpose of injuring the business of the corporation which is giving the information.

RIGHTS AS TO DIVIDENDS

A corporation earning a regular income upon its investment may use its surplus earnings in either one of the two following ways: (1) It may improve its plant and equipment or purchase other property; (2) it may declare such earnings to the stockholders in the form of dividends. In the first case, the capital assets increase in value and such increase is represented on the company's books as a surplus, as shown in the following balance sheet:

BALANCE SHEET—CORPORATION F

Assets		Liabilities	
Plant and machinery	$10,000,000	Bonds	$ 5,000,000
Improvements	5,000,000	Stock	5,000,000
		Surplus	5,000,000
Total	$15,000,000		$15,000,000

Let us assume that the corporation has been operating for five years, and during this period has been earning $1,000,000 annually, but has used this income to improve its plant and machinery. Having adopted this policy, it has been unable to pay dividends in the ordinary sense of the word. The stock which was originally worth its face value is now, provided the improvements were desirable in themselves, worth twice its face value, or $200 for each $100 share. Supposing at this point that no further improvements are desirable and that the investments out of profits are beginning to show results in increased earning power, the corporation, having been able to earn $1,000,000 annually on the $10,000,000 invested, will, under the assumed conditions, earn $1,500,000 annually on its $15,000,000 investment. Assuming a 5 per cent rate of interest on the bonds, the stock was earning $750,000 annually before the improvements were begun,

or a rate of 15 per cent upon the capital stock; and after the improvements were completed it would earn $1,250,000 annually, or 25 per cent on the stock. The directors may, therefore, begin dividends, provided they do not deem it desirable to increase the cash surplus and declare such dividends on existing stock at the full earning rate, namely 25 per cent. This policy is, however, likely to cause public criticism and, in the case of public service corporations, political interference with the rates or with the quality of the service rendered by the company.

The directors may, therefore, adopt a different policy. Since each share having a par value of $100 represents assets worth $200, the total stock of the company may, by an amendment to the charter, be doubled in amount and one share of new stock issued as a gift to each holder of one share of the former issue. The changes caused by this policy are shown in the following balance sheet:

BALANCE SHEET—CORPORATION G

Assets		Liabilities	
Plant and machinery with improvements	$15,000,000	Bonds	$ 5,000,000
		Stock	10,000,000
Total	$15,000,000		$15,000,000

Stock Dividends

The process of converting the existing surplus into additional stock, as described above, is called "declaring a stock dividend," or, in the expressive language of Wall Street, "cutting a melon." Wherever a real surplus exists and the stock representing it is issued pro rata to all the present stockholders, no valid criticism against this method of declaring a dividend can be presented. Such a surplus can be created only by withholding the earnings and those who have held their stock during the waiting

period are entitled, upon both moral and economic grounds, to their share of the new stock.

In some cases, however, the directors instead of giving new stock as a bonus to the existing stockholders, either by choice or as a result of statute law, require that all new issues shall be sold for cash and offer such shares to a public or private market. Let us suppose that such shares are offered to the existing stockholders pro rata at $75 per share. In this case the stock is offered to a private market. Those stockholders who have funds available for investment are in a position to take up their quota and thus make $25 per share by purchasing the new stock at less than its real value. On the contrary, those who have no funds available for investment at the time the new stock is offered will be unable to take advantage of this opportunity. In such cases the stockholder's rights to subscription become of value when a corporation, either by force of law or through the application of the principles of equity, provides for such contingencies, and the latter class of shareholders are able to sell their rights for cash and thus realize upon their surplus in this way.

Until the economic right of every stockholder to participate in the distribution of dividends through the issue of additional stock shall be fully guaranteed by statute law in every state, there will be opportunity to withhold earnings for a period of years, create a surplus, issue additional stock to represent the same, and then give those shareholders having surplus capital the chance, which they ordinarily do not hesitate to use, of subscribing for stock which was not taken up by the other shareholders. Fortunately this method of defrauding certain members of the corporation for the benefit of the rest is of much less importance than formerly, owing partly to

the protection afforded by changes in the statute law of many states and partly to the fact that stockholders as a result of experience take the precaution to protect themselves when new issues of this kind are authorized. Where such stock is offered to the public market, those shareholders in closest touch with the financial situation will have a decided advantage in taking up the new issues. At the present time, however, such stock must ordinarily be offered first to the present shareholders rather than to the public market.

Cash Dividends

In the second case, the capital assets increase regularly during each year, but at the end of such period are reduced to their former status by the conversion of the surplus into dividends. The changes which the assets and liabilities of a corporation undergo as a result of this process, are shown by the following series of balance sheets:

BALANCE SHEET—CORPORATION H

(A) AT THE BEGINNING OF THE YEAR

Assets		Liabilities	
Plant and machinery	$10,000,000	Bonds	$ 5,000,000
		Stock	5,000,000
Total	$10,000,000		$10,000,000

(B) AT THE END OF THE YEAR

Assets		Liabilities	
Plant and machinery	$10,000,000	Bonds	$ 5,000,000
Cash	1,000,000	Stock	5,000,000
		Surplus	1,000,000
Total	$11,000,000		$11,000,000

(C) AFTER THE DIVIDEND IS DECLARED

Assets		Liabilities	
Plant and machinery	$10,000,000	Bonds	$ 5,000,000
Cash	1,000,000	Stock	5,000,000
		Dividend No. 1	1,000,000
Total	$11,000,000		$11,000,000

(D) AFTER THE DIVIDEND IS PAID

Assets		Liabilities	
Plant and machinery	$10,000,000	Bonds	$ 5,000,000
		Stock	5,000,000
Total	$10,000,000		$10,000,000

Generally the right to declare dividends is granted to the directors of a corporation. Under such circumstances the stockholders cannot by vote require them to take action upon the question of dividends, much less fix the rate at which they shall be declared. However, when once a dividend is declared by the board of directors, the individual stockholders have the right to share in it in proportion to their stock. They can collect the amount due them from the corporation by use of the legal method of collecting debts.

Whenever there are two or more classes of stock, the respective rights of each class are fixed in the charter. The holders of shares in any class have the right to dividends as they are declared, but as individuals they have no right, on account of owning a superior class of stock, to compel the directors to authorize a dividend. For example, the holder of 7 per cent cumulative preferred stock has no legal right to a dividend at all except when such is duly authorized by the board of directors. In this respect all classes of stockholders are in the same relative position.

RIGHT TO ASSETS

At the dissolution of a corporation, whether by limitation, by legislative act, or by insolvency, the stockholders have the right individually to share proportionately in the assets after all debts for which the corporation is legally liable are satisfied. This is the rule where there is one class of stock only. Where there is preferred stock as well as common stock, it is usually provided by statute that the preferred stock must be paid in full before any distribution can be made to the general or common stockholders. Such is the New Jersey law. It is usually possible to provide in the charter that preferred stock may be preferred as to dividends only, and that in this case it shall share the assets equally with the common stock when the corporation is dissolved. In such cases all stockholders have the right to share equally in the assets of the corporation.

Liabilities of Stockholders

In general, stockholders are free from any personal liability for debts due the creditors of a corporation. This principle was adopted, as has been shown in an earlier section, as a result of the recognition of the personality of the corporation. It involves a complementary principle, namely, that each share of stock shall be paid for in full at the inception of the company and that the assets shall have been maintained intact since organization.

LIABILITY FOR UNPAID BALANCES

It is not unusual, however, for a corporation to provide for the issuance of, for example, $10,000,000 worth of capital stock and to begin business on one-fourth of that amount by calling for 25 per cent only of the face value of the stock issued, specifying that the remainder,

namely, 75 per cent, may be paid in installments or upon call by the board of directors. In such cases the individual stockholder is, of course, liable for the unpaid balance to satisfy the claims of the creditors.

A more complicated case arises where the same condition exists with this exception: That the stock so issued is subject to no further calls for payment, but is called full-paid and non-assessable. Here the corporation cannot by its own vote assess outstanding stock, but if in the course of business it incurs indebtedness in excess of its corporate assets, it is the duty of the courts to compel the individual stockholders to pay up in full or as much thereof as is needed to pay all just obligations.

Where the stock is paid for in cash or its equivalent, the case is a clear one and presents no difficulties. Where, however, as so often occurs, part of the stock is issued in exchange for property whose value is not well established, the application of this principle is exceedingly perplexing. Suppose, for example, a partnership has outgrown the proper limitations of this form of business organization, and is converted into a corporation. The partners become stockholders and issue stock to themselves against their former partnership interests. The value of the partnership property may be difficult to ascertain, and the stock issued, as it appears, may be in excess of the real value of the property. Conditions may change; the business may become unprofitable and bankruptcy may follow. The claims of the creditors exceed the selling value of the assets and either the creditors must lose or the stockholders must be assessed by the courts to make up the deficit. The question then turns upon the valuation of the assets and the relation of such valuation to the amount of stock issued.

Such cases, where no fraud in valuation was originally

intended, present unusual difficulties, and have led to the adoption of the clause in the New Jersey statute providing that where stock is issued for property, in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive.

DIVIDENDS OUT OF ASSETS

Even where the stock issued at the organization of the corporation was paid for in full, it is, of course, possible, by paying dividends out of the capital assets, to create a real deficit and thus, in cases of insolvency, defraud the creditors, unless either the stockholders or the directors or both can be held liable for the amount thus diverted to the stockholders. Where the accounts are accurately and honestly kept, the declaration and payment of such a dividend would, of course, show upon the books and the prospective creditors could, if they had access to such accounts, make allowance for the deficit; but usually where such dividends are declared the accounts are "doctored" so that the true condition of the corporation's finances are concealed.

To illustrate this situation, let us assume that a corporation is engaged in mining copper. Its deposits of copper are estimated to be worth $8,000,000 and its plant $2,000,000. It has outstanding $10,000,000 in par value of capital stock. After operating for a year it has taken out one-eighth of its entire copper deposits and has, after paying expenses, $1,000,000 in cash. Its correct financial status at this time is shown in the following:

BALANCE SHEET—COMPANY I

BEFORE INFLATING ASSETS

Assets		Liabilities	
Copper ore	$ 7,000,000	Capital stock	$10,000,000
Plant and machinery	2,000,000		
Cash	1,000,000		
	$10,000,000		$10,000,000

Having cash in the treasury, the directors may declare a dividend, though it is evident that it must be paid out of assets rather than out of profits. Disliking to acknowledge the real condition of affairs, the directors declare a dividend of 8 per cent and at the same time inflate the assets by $1,000,000. The financial condition of the company after this adjustment has been made is shown in the following:

BALANCE SHEET—COMPANY I

AFTER INFLATING ASSETS AND DECLARING DIVIDEND

Assets		Liabilities	
Copper ore	$ 7,500,000	Capital stock	$10,000,000
Plant and machinery	2,500,000	Dividend No. 1	800,000
Cash	1,000,000	Surplus	200,000
	$11,000,000		$11,000,000

Assuming that the stockholders have the right to examine the books or that full accounts are published and distributed among them, the conclusion reached by the average stockholder will be somewhat as follows: The company has taken out $500,000 worth of ore and has sold it at prices netting $1,000,000 after paying operating expenses. At the same time the plant and the machinery have been improved by the expenditure of $500,000. A dividend of 8 per cent then distributes only four-fifths of the net income for the year. This condition is highly

gratifying to the stockholders and they accept the dividend declared and compliment the management.

Let us suppose this process is continued for several years and the stock of ore begins to show exhaustion. Every ton mined is encumbered with an increased cost of production and when the ore is exhausted the plant is likely to be practically worthless. If, during this period, debts are allowed to accumulate, the creditors find themselves secured by an empty mine and a plant whose value is dependent upon the value of the remaining ore deposits. It is plain, therefore, that the creditors cannot have their claim satisfied through the sale of the assets. Who, then, ought to make such claims good? Clearly the directors who have been declaring dividends out of the assets, and since the stockholders constitute the corporation and are liable for the election of the directors and have, at the same time, been receiving the assets in the form of dividends, they should pay such just debts rather than shift them upon those business enterprises from which they have been purchasing materials and receiving credit.

Recognizing the equity of this principle, the legislatures and the courts in the United States have generally prescribed by law and judicial decision that stockholders are liable to creditors of the corporation when insolvency is caused by the payment of dividends out of the assets. And this is the general rule even though the stockholders have themselves been deceived as to the real condition of the finances of the company.

The stockholders are also individually liable to the creditors of the company where a similar financial condition has been brought about in a more formal way, namely, by reducing the amount of the capital stock and distributing a proportionate part of the assets to the in-

dividual shareholders. The principle involved in all these cases is one and the same. The individual stockholder is freed from liability for debts only upon condition that the par value of stock is represented by actual assets of equal value throughout the life of the corporation and so long as any unsatisfied creditors are in existence.

SPECIAL LIABILITIES

In some of the states, notably NewYork, Indiana, North Dakota, Pennsylvania, South Dakota, and Tennessee, special consideration is shown the employe by permitting him to recover directly from the individual stockholders wherever he is unable to obtain from the corporation itself payment for service rendered. In some states all corporations formed under the general act are included. In others only mining, manufacturing, and other industrial corporations are subject to this rule. In two of the states, California and Minnesota, all stockholders are subject to a double liability, as are stockholders in the national banking corporations formed under federal law.

In this instance the principle of limited liability is only partially adopted. Each stockholder is liable not only for the par value of his stock, but for any additional amount equal to such par value.

The liability of a stockholder may be summarized as follows:

1. Liability to the corporation or to unsatisfied creditors for unpaid installments on part paid stock.
2. Liability to unsatisfied creditors of a corporation in case dividends have been paid out of capital assets.
3. Liability to employes of a corporation for wages due them.

4. Double liability for the debts of national banks, many state banks, and also industrial corporations incorporated in California and Minnesota.

5. Liability to the amount of his investment in a corporation for the claims of unsatisfied creditors.

A stockholder, upon the dissolution of a corporation, has no right to a share in the assets until all debts of the corporation have been paid.

Rights of Creditors

Every business enterprise, whatever the form of organization, is constantly using capital and labor furnished on credit by investors, other business enterprises, and workmen. Consequently the rights of such creditors are of considerable importance to the corporation. A part of the creditors are usually secured by the pledge of certain definite portions of the assets. The remainder are secured only by claims upon the general assets. In general the employes take precedence over all other classes of unsecured creditors, and in some of the states, as noted above, may even collect from the stockholders of the corporation when unable to do so from the corporation itself.

The rights of creditors become of special importance in cases of insolvency. Under such circumstances their claims may be satisfied in full by the contribution of additional capital on the part of those holding the contingent interest, or such creditors may become either bondholders or stockholders or both in the reorganized company, as the case may seem to warrant. So long as their claims are paid when due, the creditors, like the bondholders, have no right to interfere in any way in the management of the enterprise.

TEST QUESTIONS

1. What are the chief rights of the bondholders of a corporation?

2. Why is it considered better policy to provide one or two large bond issues rather than a variety of small ones?

3. What action may the bondholders take in case the principal or interest on their bonds is not paid?

4. How do the rights of different classes of bondholders vary?

5. Why are the stockholders of a corporation interested in keeping the amount of outstanding bonds within a reasonable limit?

6. What are the four chief rights of stockholders as a body?

7. What are the three chief privileges of stockholders as individuals?

8. What is meant by the right of proxy? Have you read the proxy as given in the forms?

9. Do you understand fully what is meant by cumulative voting? Does the ballot given among the forms make clearer to you this method of voting?

10. What does the expression "cutting a melon" mean on Wall Street?

11. Who has the right to declare dividends in a corporation?

12. How does a stockholder secure his knowledge of the financial condition of his firm?

13. Under what circumstances is a stockholder individually liable for the debts of a corporation?

CHAPTER IX

OFFICERS AND DIRECTORS OF A CORPORATION

The Directors

The directors of a corporation, being at the same time stockholders, are, in their latter capacity, subject to all of the liabilities and possess all of the rights which belong to the latter body. In their capacity as directors of the corporation, however, they act as the chosen leaders of the stockholders of the corporation in managing its affairs, and on this account possess certain additional rights and are subject to certain additional liabilities which need enumeration and explanation.

The duties of the directors are stated in a general way in the corporation acts of the several states. They are further enumerated in the charter or in the by-laws, usually the latter. They are defined at length in the judicial decisions that have been handed down from time to time by the English and American courts. In general the duties of the directors of a corporation are as follows:

1. To manage the business affairs of the corporation.
2. To arrange for meetings of the stockholders and to furnish, when required by the state laws or the by-laws, annual reports showing the financial condition of the corporation.
3. To fill vacancies in their own number, such appointments to hold until the next meeting of the stockholders.

THE DIRECTORS AS MANAGERS

The Illinois corporation act states that "the corporate powers shall be exercised by a board of directors or man-

agers." Beyond providing that the directors may adopt by-laws for the government of its officers and the affairs of the company, requiring them to keep correct books of account of all the business, and specifying the penalties for declaring dividends out of capital, the manner in which they may exercise such corporate powers is left largely to the board, subject, of course, to the jurisdiction of the courts.

The New Jersey statute is quite similar, providing that "the business of every corporation shall be managed by its directors." Vice Chancellor Green, of New Jersey, in the case of Ellerman v. Chicago Junction Railways, etc., Co.,[1] said:

> Individual stockholders cannot question, in judicial proceedings, corporate acts of directors if the same are within the powers of the corporation, and, in furtherance of its purposes, are not unlawful or against good morals, and are done in good faith and in the exercise of an honest judgment. Questions of policy of management, of expediency of contracts or action, of adequacy of consideration not grossly disproportionate, of lawful appropriation of corporate funds, are left solely to the honest decision of the directors if their powers are without limitation and free from restraint. To hold otherwise would be to substitute the judgment and discretion of others in the place of those determined on by the scheme of incorporation.

As managers of the corporation, then, the directors, under the statute law and within the limitations fixed by the charter and by-laws, are authorized and expected to organize the operating departments of the business, to employ, supervise, and discharge all officers and workmen, to keep full and correct books of account, to outline in a general way the financial policy and business activities of the corporation, to determine the net earnings of

[1] 49 New Jersey Equity.

the company annually, and to declare the same in dividends or reinvest the surplus in improvements where such policy is permitted by the state laws, and in general to exercise the same supervision over the affairs of the company as an individual proprietor would over his own property. In its management, however, the directors are required to act, not as individuals, but as a single body. All important questions of business policy and all important contracts must come before them for consideration and action at regular or special meetings. Matters of routine may, of course, after the general policy has been determined, be entrusted to the proper officers to be carried into execution.

The three really important functions of the directors as managers are: (1) to organize the business into departments, select or approve, on recommendation of a committee, the heads of such departments, and authorize the appointment of assistants and the employment of workmen; (2) to determine, in a general way, the activities of the corporation, requiring all important contracts and questions of business policy to come before them for direct action, but giving heads of departments considerable liberty in the execution of the general policies established by them; such liberty of action will generally be exercised without abuse, provided full reports are submitted regularly to the directors; and (3) to determine the dividend policy of the corporation.

The first two of the above functions will be treated at length in the companion volume on *Industrial Organization and Management.* The third function requires further treatment here.

(1) The Dividend Policy of Directors

It has been said that a corporation is created for the purpose of earning profits and dividing the same among

the stockholders in the form of dividends. In the case of business corporations this is undoubtedly true, but as shown above, it is sometimes better business policy to withhold dividends for a period of years and use the surplus earnings for improvement of plant or machinery or for the extension of the activities of the company rather than to distribute the profits annually. Which of these two policies is better depends largely upon conditions that vary in specific cases. Hence every corporation presents a separate and distinct problem, but the following may be laid down as a general principle. In a country rapidly developing from the technical and industrial point of view every business enterprise is likely to need for the most efficient operation more and more capital, a larger and larger plant or plants, and more expensive machinery, as the years go by. If all of the annual earnings are distributed annually to the shareholders, the enterprise will become less and less efficient relatively, and in the course of time insolvent. To avoid this unfortunate contingency, additional capital must be invested in the enterprise. Such additional capital may come from outside sources or from those who now hold the stock. If the enterprise is a prosperous one, those now holding its shares will naturally wish to furnish the new capital and thus continue to control it. They may accomplish their purpose either by declaring all the earnings in dividends annually and increasing the capital stock as needed or by foregoing dividends and using the surplus to improve the plant. As the former of the two processes is attended with more or less expense, it is often better policy to adopt the latter course.

To forego dividends, however, even for a period, has one disadvantage. It is particularly unfortunate for those shareholders who depend on their dividends for a

whole or a part of their annual living expenses. The directors, therefore, in determining upon a dividend policy, ought to take into consideration the character of the stockholders and the effect of withholding the annual earnings upon those who need such income to meet their own living expenses. While the policy of withholding dividends for the purpose of improving the plant may thus be defensible from the standpoint of the corporate enterprise, it may be harmful to the welfare of a considerable portion of its shareholders.

On the other hand, the directors may adopt the policy of declaring dividends in excess of the actual earnings, concealing the practice by padding the assets. Such practice is usually forbidden by statute law and by the by-laws of every respectable company, and it is further discouraged by making the directors liable to the creditors for any loss sustained thereby. This penalty, however, does not protect the interests of the stockholders whose future prospects may in this way be partially or wholly ruined.

(2) Manipulations

It has been assumed in the foregoing discussion that the directors, in deciding their policy, have the best interests of the company at heart. It will be evident on reflection, however, that the power to declare or withhold dividends may be used for illegitimate purposes, among which that of causing fluctuations in the price of the stock is the most pernicious. It has been noticed that one of the advantages of the corporation is the ready transferability of its shares. To facilitate such transfers, stock exchanges are established and maintained in the larger cities. The stock of each corporation of public importance is being regularly bought and sold on the exchanges

or on the curb which grows up about the exchanges and one of the important criterions by which the price of the stock is governed is the dividend rate. To increase this rate causes an advance in the selling price of the stock. To lower the rate, the reverse. And this is true even though such changes in the dividend rate bear no direct relationship to the annual earning rate of the company. Consequently the board of directors may withhold dividends or reduce the rate even where the earning power is unchanged, and thus cause the stock to sell at a lower price. Later they may increase the rate and cause an advance in price. They may, as individuals, purchase the stock when it is selling at a low price and sell it later when it is going at a higher price.

The directors may, by changing the dividend rate, cause variations in the price of stock and take advantage of their own action as directors to enrich themselves as individuals at the expense of the other stockholders. Such practices, while not sanctioned in the better corporations, have been altogether too common in American corporation finance to be overlooked. Since the directors are, under ordinary circumstances, permitted by law to declare dividends when and at what rate they see fit, the only effective safeguard in the hands of the stockholders is the power to change the directors at the annual elections.

THE DIRECTORS AND THE STOCKHOLDERS

A second function of the directors is to arrange, through the proper officers, for the regular meetings of the stockholders and see that matters properly coming before them are presented in an orderly way and that the action taken is correctly recorded and faithfully carried into effect. In some states it is provided by statute, and

in most corporations by the by-laws, that the directors shall keep accurate books of account showing correctly and fully the transactions of the company. In some states it is made the duty of the directors to see that stockholders have access to the books during business hours. In the by-laws of many corporations it is also provided that a summarized statement of the results of the business in the form of an annual balance sheet showing the assets and liabilities properly arranged and an income account showing the annual income and outgo, be published and distributed to the stockholders at or before the annual meeting.

THE DIRECTORS AND VACANCIES

The directors may ordinarily fill vacancies in their own number, such appointments to hold until the next regular meeting of the stockholders. The stockholders may, in the by-laws, provide for any other method of filling vacancies or may permit such vacanies to remain until the regular meeting for the election of officers. Usually a director cannot be removed, either by the board or by the stockholders, unless provision for such action is made in the charter. In some states, however, a director may be removed for misconduct in office by action at law instituted through the office of the attorney-general of the state.

LIABILITIES OF DIRECTORS

The directors of a corporation in their capacity as the organized administrative board in charge of its business affairs are trustees for the stockholders and are expected to use discretion in the management of its affairs, to conform to the law of the states and to the provisions of the charter and the by-laws. So long as they observe the above requirements they are free to act in

good faith according to their own judgment. If, however, they fail to conduct the corporate business in accordance with the above conditions, they are ordinarily subjected to personal liabilities for certain specific acts, of which the following are the more important:

1. For declaring dividends except out of the surplus profits.
2. For issuing stock as fully paid when in fact it is only partly paid for.
3. For disobedience to the laws of the state or states in which the company is operating.
4. For failure to exercise reasonable care and good faith in the management of the affairs of the corporate business.

(1) Liability for Illegal Dividends

As it is the function of the directors to declare dividends, so it is their duty to use discretion in such action and to make distribution to the stockholders only out of the surplus. For this reason, among others, they are required to keep accurate books of accounts in order that they may be satisfied that any distribution in the form of dividends will not impair the solvency of the corporation. The Illinois corporate act is especially explicit upon this point. It states:

> If the directors or other officers or agents of any stock corporation shall declare and pay any dividend when such corporation is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, all directors, officers or agents assenting thereto shall be jointly and severally liable for all the debts of such corporation then existing, and for all that shall thereafter be contracted while they shall, respectively, continue in office.

The New Jersey act is essentially the same, with the provision that any director who was absent at the time the dividend was declared or who dissented from the action when it was taken, may exonerate himself from the liability by causing his dissent to be entered at large on the minutes or by publishing notice of his dissent in a newspaper in the county where the corporation has its principal office. The directors, then, being responsible for the declaration of dividends which have not been earned, are thus in the first instance held liable, jointly and individually, for losses caused the creditors of the corporation. Accordingly the stockholders who ultimately are liable for such distribution of the assets are ordinarily protected from loss through the prior liability of the directors.

(2) Liability for Stock Issues

In a similar way the directors are personally liable for losses occasioned by failure to provide for the full payment of the stock at the organization of the company. This provision rests upon essentially the same principle. Failure to pay for the stock in full at the organization causes a deficit at the beginning of the corporate existence. The declaration of dividends out of capital brings about exactly the same condition after the corporation has been in operation. In either case the responsibility is rightly thrown upon the directors who are entrusted with the management of the corporate affairs.

(3) Liability for Violating Laws

In the third case the situation is somewhat different. The stockholders, having no voice in the ordinary affairs of the corporation, are not in a position to know whether the laws are being observed or violated. The directors

are. Hence any loss sustained by the corporation on this account is properly thrown on the directors. It is thus their duty to know the legal conditions under which the corporation is operated and to see that its business is conducted in a lawful manner. For this purpose, all corporations need the advice of competent legal counsel and the larger ones make the legal department an essential part of the corporate organization.

(4) Liability for Breach of Trust

The fourth case presents greater difficulties in practice, although it is in theory entirely in accordance with the principles of corporate management. Directors are chosen for two purposes: (1) because it is impracticable for the whole body of stockholders in a corporation of considerable size to participate in its management; hence its management is entrusted to a selected few; (2) it is ordinarily expected that by selecting a few of the stockholders to act as managers of the company, a higher order of business capacity and judgment may be secured. It is on the second of these two propositions that the requirement that the directors must exercise reasonable care and good faith in the conduct of the corporate business rests. Having been selected as the chosen few on account of their superior business ability, the directors are properly held individually liable for indiscretion in business policy and for fraud in actual transactions.

The enforcement of this principle of corporate management is full of difficulties. It is not easy to determine in advance the wisdom of all questions of business policy; and to throw the burden for losses upon the directors when they acted in good faith would hardly appeal to the courts of equity. Consequently, it is, as a matter of fact, only in cases of actual fraud that direct-

ors are ordinarily held liable. Here the case is clearer. It is sometimes impossible to determine where the responsibility lies even in such cases, but usually the courts have been able to determine the facts and in many such cases to hold the guilty directors responsible for their fraudulent actions. Owing to the difficulty in proving fraud, it is ordinarily provided that a director may not participate in corporate action in case of contracts in which he is personally interested. In view of the difficulties involved in the enforcement of the liability to which directors are subjected for mismanagement and fraud, it is undoubtedly true, as has so often been said, that the best safeguard of shareholders lies in the choice of an experienced and honest board of trustees.

The Corporate Officers

The officers of a corporation may be divided into two classes, dependent upon their relationship to the corporate organization. The first class includes those whose duties are intimately connected with the internal affairs of the corporation, the second class those whose duties are connected with its external operations. Since we are now considering the organization of the internal affairs of the corporation, the duties of the officers included within the first class will be treated here.

As already noticed, certain of the officers of a corporation are considered so necessary to its welfare that they are usually named in the corporation act and their duties there outlined, for the purpose of prescribing in detail the responsibilities of each officer. In addition, as a result of judicial decisions, the officers of a corporation are subjected to various personal liabilities for failure to perform, in a faithful and honest manner, the duties assigned them. The corporate officers always include the

president, the vice-president or vice-presidents, the secretary, and the treasurer. In the more complex corporations there are, in addition, a chairman of the board, an executive committee, a general counsel, and a comptroller.

Some of the above officers, as, for example, the secretary, may be entirely occupied with duties pertaining to the corporate organization. Others may serve in double capacity, first as officers of the corporate organization, and second as officers of the operating organization. It is in the former capacity that we are now considering them. The corporate duties of each of the above officers have been described in the section on the by-laws. It is the purpose of this section to enumerate the personal liabilities to which they are subjected for negligence or wrong-doing in connection with their official duties.

DUTIES AND LIABILITIES OF OFFICERS

In the first place, under the common law, officers of the corporation are generally liable for damages resulting from failure to perform their duties properly or for illegal action of any kind. This subject is fully treated in the law of officers and every officer of a corporation should be thoroughly informed in regard to his liabilities as well as his duties. In the second place, the corporation acts of the several states add certain specific liabilities for failure to perform certain prescribed duties.

Among the more important of these prescribed duties are the following:

1. Officers are required to keep the stock and transfer books open for inspection during business hours.

2. Officers are not permitted to make loans to any officer or stockholder.

3. Officers render themselves personally liable for all

debts of a corporation created by signing false certificates and false notes.

4. Officers signing false certificates render themselves criminally liable for such action.

5. In some states officers tampering with the entries in books of account and other corporate records are declared guilty of forgery and subjected to the penalties thereof.

TEST QUESTIONS

1. In general what are the three chief classes of duties of the directors of a corporation?

2. What are their responsibilities as managers of the corporation?

3. What principles should guide the board of directors in determining upon their dividend policy?

4. What are the four chief classes of liability of the directors of a corporation?

5. Is it necessary to examine the corporation laws of a state in determining upon the number and kinds of officers to include in the corporate organization?

6. How do the officers of a corporation secure their positions?

7. What five important duties fall upon the officers of a corporation?

CHAPTER X

ORGANIZATION FOR OPERATION

The Proprietorship and the Operating Organization

The nature of the ownership, whether an individual proprietor, a partnership, or a corporation, determines in a general way the chief characteristics of the internal organization of any business enterprise. Every business organization is, however, created for the purpose of undertaking some specific phase or phases of the industrial or commercial activities of the country wherein it is located. The nature of those activities, while affecting, as already observed, the character of the internal organization, is the controlling factor in determining the general features and, to a somewhat less extent, the details of the operating organization. For example a cotton factory may be owned and managed by an individual proprietor, by a partnership, by a corporation, or by a co-operative society. The character of the ownership has almost no influence on the working or operating organization in the factory. Indeed the expert operative might work in either one for years and never know under which form of organization the factory was operating. The plant would show no material difference, the machinery would be practically identical, the operations would be carried on in the same way, and the product turned out could not be distinguished.

General Principles of Organization

The operating organization being determined not by the ownership but by the character of the work under-

taken, it follows that there are certain general principles which underlie the organization of all operating business enterprises and that these general principles are observed by all well-managed enterprises without regard to their internal organization. The more important of these general principles are as follows:

1. The executive authority should be centralized in form and entrusted to one individual or a small group of individuals working under definite responsibility but possessing considerable freedom in the choice of ways and means.

2. The operations should be subdivided into departments, each department having a certain specific work to do and in its work subject to the general supervision of the central executive but being entirely independent of every other department.

The Executive

In the individual proprietorship the executive ordinarily is the proprietor himself, although in some cases the proprietor employs a chief executive called a "general manager" and delegates to him the executive functions. In the partnership the members, jointly and severally, usually act as the chief executive, parcelling out the functions among themselves or entrusting such duties to one of their own number designated as "managing partner." The partnership, however, may employ a general manager and thus relieve themselves of the active duties of the management. In the corporation the executive function is always exercised by a selected few, sometimes consisting of a group of persons designated as an executive committee, sometimes consisting of one person under the title of president. In certain cases both an executive committee and a president are pro-

vided for in the organization. When such is the case the executive committee is the supreme executive authority and the president is an officer of the executive committee, carrying out its instructions in regard to the general policy and having considerable discretion in regard to the actual details of the executive duties.

The executive thus occupies an intermediate position between the proprietorship and the business operations, receiving general instructions as to policy from the proprietorship and issuing specific directions to the several heads of departments for the purpose of carrying out the general policy into practical results. This relationship may be illustrated by the following table which, in a rough way, shows all the component parts of a complete business organization.

Ultimate Authority	General Policies	Chief Executive	Departments
Individual proprietor	Individual proprietor	Individual proprietor or general manager	Legal, Accounting, Purchasing
Partnership	Partners	Partners, severally, or managing partner	
Corporation	Stockholders and directors	Executive committee or president	Manufacturing, Sales, Transportation
Co-operative society	Society and the committee	Executive committee or president	

While the character of the chief executive varies with the nature of the proprietorship and, to a less extent, with the size of the business and the scope of its operations, in all cases this office has one feature in common,

namely, its intermediate position as the medium through which the ultimate authority finds expression in concrete results through the operation of the several departments.

THE SINGLE V. THE PLURAL EXECUTIVE

Whether the executive shall be a single head or a group of individuals acting as one, depends largely upon circumstances. In the individual proprietorship the executive head ordinarily is, as stated above, either the proprietor himself or a general manager under his employment. While not customary, it is possible for an individual proprietor to entrust the executive duties connected with his business to an executive committee of the usual size and standing in the same relationship to him as the executive committee of a corporation stands to the stockholders and directors.

The partnership, on the contrary, usually has a plural executive head, all the partners participating impartially in the executive duties. This feature of the partnership is, as is well known, one of the weaknesses of this form of organization and this fault is sometimes corrected by the appointment of one of the partners as the managing partner. The partners then, as a body, formulate the general policy and the managing partner carries it into execution.

Formerly the corporation always had a single executive head in the person of a president. In recent years, owing largely to the complexity of the work conducted by the greater corporations, it has been found advisable to entrust the executive duties to a committee selected from the directors and officers and to make the president the head of this executive committee. The executive committee then decides on the more important questions

of administration and the president supervises and directs the work of the several departments, each of which, under its own staff, is actively engaged in the detailed work of trade and industry. In this respect the cooperative society resembles the ordinary corporation.

For small business enterprises, whatever the character of the internal organization, the single executive head possesses marked advantages over the plural. The single executive is able to act promptly and thus take advantage of opportunities not open to the slowly moving executive committee. Furthermore in the partnership with several partners and in the small corporation the directors act as an executive committee, not only formulating policies, but making plans for their prompt and efficient execution. In the larger corporations the executive committee system has been adopted for two reasons: (1) the management of such business enterprises is entirely beyond the capacity of any one man, owing partly to its physical extent and partly to the variety of operations conducted; and (2) the executive is obliged to determine questions coming up daily of so great moment that they demand the combined judgment of several men. While in most cases the decision of the one-man executive would not involve the company in disaster, it is the exceptional instances that must be guarded against. The executive committee system, as compared with the single executive, lacks somewhat in promptness of execution but more than offsets this disadvantage by the uniform wisdom of its decisions on important questions of business policy and business practice.

RESPONSIBILITY TO THE PROPRIETORSHIP

The chief executive is in theory, and should be in practice, either directly or indirectly responsible to the ulti-

mate authority, that is, to the individual proprietor, the partners, the corporation, or the co-operative society, as the case may be. In the first two cases there is ordinarily no difficulty in this respect. In the corporation and the co-operative society, however, the chief executive may, in practice, become so far independent of the authority to which it is responsible as to present entirely new problems of business management. The following statement of Mr. Jacob H. Schiff, before the New York Legislative Insurance Investigating Committee in 1905,[1] represents an extreme case and is hardly typical of the situation as a whole. Still it is sufficiently true to bear repetition. He said:

> The system of directorship in the great corporations of the City of New York is such that a director has practically no power; he is considered in many instances, and I may say in most instances, as a negligible quantity by the executive officers of the society; he is asked for advice when it suits the executive officers, and if under the prevailing system an executive officer wishes to do wrong, or wishes to conceal anything from his directors, or commits irregularities, the director is entirely powerless; he is only used in an advisory capacity, and can only judge of such things as are submitted to him. Directors are of very little use except to comply with the formal provisions of the law.

The accuracy of Mr. Schiff's assertion is confirmed by the fact that certain capitalists occupy the position of director in as many as sixty different corporations, while at the same time actively engaged as president or manager of the same or other similar business enterprises. It is apparent that where an individual acts as a director in many enterprises he cannot give each of them the personal attention that is necessary to insure the adoption of a wise business policy. What more natu-

[1] Report page 1000.

ral, then, than that he should look to those having a more intimate knowledge of the company's affairs for guidance? Thus the directors become the servants, and sometimes the tools, of the executive officers. Where the executive officers are able and honest administrators, the affairs of the corporation suffer no harm; but where, as in some cases, such persons are unwise, selfish, or actually dishonest, the stockholders who assume that their rights are being guarded by the directors suffer the consequences in the ultimate wreck of the corporation.

No practical remedy for this condition has, as yet, been proposed. It would seem unwise to hasten the consolidation of the corporations by limiting the number of corporations in which a person may hold directorships and yet it might be better to have fewer and larger corporations if by so doing a better and more responsible management could be secured. It may prove advisable to require directors to give more personal attention to important matters and thus secure, in an indirect way, what may not be advisable by direct methods. It is true that each director, entrusted as he is with the determination of the important questions of business policy, ought to be informed in regard to the financial condition of the corporation, in regard to its wage system, its treatment of employes, its price policy, or its treatment of competitors, as well as its earnings and dividends. The average director is too often content when he finds the dividend rate satisfactory to himself and the other stockholders.

THE FUNCTIONS OF THE EXECUTIVE

The executive has two main functions: (1) to execute the general policies formulated by the proprietors or the direct representatives of the proprietors of the enterprise; and (2) to assist the management in the process

of organizing the operation of the company into departments, each with its own specific duties and responsibilities.

(1) Relationship to Proprietors

The proprietors, whether individuals, partners, stockholders, or members of a co-operative society, under the present constitution of our economic institutions, being responsible for the failure of the enterprise which they control, are properly expected and formally authorized to determine the character of the work to be undertaken, the use of the capital invested, and the general problems of manufacturing and selling the goods. Except in those organizations where the proprietor and the executive are one and the same person or group of persons, it is, however, manifestly impossible for this body properly to supervise the actual execution of the policy which has been formulated and adopted.

The executive is, therefore, created for this particular purpose. For example, the directorate of a corporation has decided to make an addition to the factory at a cost of $1,000,000. The executive causes plans to be prepared, presents them for the approval of the directorate, and after such approval, superintends the erection of the extension. Again, the directorate has decided to lessen the output of the goods manufactured by 10 per cent. The executive takes the necessary steps to close down a part of the factory or to work the whole force fewer hours. In still another case the directorate determines that it is wise and proper to increase the dividend rate from 6 to 7 per cent. The executive makes the necessary arrangements for the payment of such dividends by setting aside the funds and sending out the dividend checks.

The work of the executive is, however, not confined to

carrying into operation the specific directions of the proprietors. In many, indeed in most, cases the directors formulate the policy of the corporation in general terms and under such circumstances the executive is expected to act upon its own judgment in the determination of ways and means by which the policy is realized. For example, a corporation, through its directors, has decided to adopt the policy of absorbing its competitors wherever and whenever opportunity offers. The executive is apprised of this policy and its function is then to secure control of rival companies by the most appropriate methods. Thus a considerable amount of discretion must always be entrusted to the executive and the success of the enterprise will depend largely upon the wisdom the executive displays in using its liberty.

The executive is, of course, in much closer touch with the actual operation of the enterprise than the directors or the proprietor and, therefore, in addition to its work above described, it should prepare plans, make suggestions, and advise the adoption of such policies and practices as in its judgment will prove conducive of the welfare of the company. When the corporation is operating in many lines and especially where the directors are not only actively engaged in business for themselves, but in addition sit as directors on many other boards, this particular function of the executive assumes large proportions. Indeed in many cases all new plans and propositions for the improvement of the company's position habitually and normally come from the executive department. Such plans, after consideration and adoption by the responsible managers, will then be put into actual operation by the executive officers as in other cases. On the other hand, the executive, in its turn, relies upon the ideas and suggestions coming from the superin-

tendents of factories and managers of departments and it is customary in some of the better-managed business enterprises to offer premiums and rewards of various kinds for suggestions looking toward the improvement of the company's operations.

(2) Relationship to Operation

The second of the important functions of the executive is to supervise the organization of the operations of the company into departments, to appoint the official heads of each, and to see that each department not only does its own work effectively, but at the same time co-operates with the other departments with which it comes into active contact. In this work there are two general methods of organization. The first is based upon the character of the work performed, the second upon geographical location. Thus, for example, the American Smelting and Refining Company subdivides its operations into three grand departments based upon economic considerations, namely, the purchasing department, whose duty it is to purchase ores, the operating department, whose duty it is to reduce and refine ores, and the sales department, whose duty it is to sell the finished product. At the same time the plants are organized into groups, based upon geographical location. For example, the Colorado group comprises the plants located in Colorado and vicinity, with headquarters at Denver. The southern group comprises the plants in Texas, Arizona, New Mexico, and Mexico, with headquarters in Mexico City.

Of these two basic principles of organization, the geographical has the advantage of economizing distance, the functional or industrial, the work of supervision. Where the operations are widely scattered, as in the case of the smelting company just mentioned, the geographical basis must be observed to a considerable extent. Thus while

the corporation organizes its work into purchasing, refining, and selling departments, it at the same time makes use of its resident managers of plants to act as local agents of the purchasing department, thus saving the expenses of a local purchasing agent. Where the purchasing of ores becomes of especial importance a resident agent of the department is stationed.

Owing to the fact that most of the large corporations operate plants located at considerable distance from each other, and at the same time maintain purchasing or selling agencies at these same points, it is usually found advisable to follow the plan adopted by the smelting company and thus to a certain extent use both principles of organization. In such cases some of the officers serve in a dual capacity, working under one department head part of the time and under another the remainder. While the manager of a plant is managing the reduction of ore in the furnace, he is responsible to the operating department and reports to the general manager. When, however, he is purchasing ore he is responsible to the purchasing department and reports to the general purchasing agent. Such overlapping of departments is, however, directly contrary to the principle of specialization and is, therefore, adopted only where the work of one department is not sufficiently important to occupy the full time of an officer of the requisite capacity.

Functional Organization

Wherever possible, the management finds it desirable to organize the operating activities of the enterprise on the basis of the character of the work which is being performed. When this method is followed, the number of departments is determined by the extent of the activities which the company undertakes. By referring to the section on fundamental principles it will be noticed

that the industrial and commercial activities are separated naturally into several groups, many or all of which may be undertaken by a particular business enterprise. If, for example, we take the most extensive business enterprise known, namely, the United States Steel Corporation, we find that there is almost no phase of business activity which it is not actually undertaking day by day, and on examination we find all of the following activities with the corresponding departments in actual operation:

1. The legal department
2. The accounting department
3. The purchasing department
4. The ore and coal department
5. The manufacturing department
6. The sales department
7. The traffic department

All of these departments are, it will be observed, the instrumentalities through which the general executive conducts the practical operations of the company. All of them are, therefore, strictly speaking, subordinate to the central authority. They differ among themselves in one important particular, however, namely, some of them are general departments, being connected with all the operations of the company, while others are what may be called "special departments," having no necessary connection with any other branch of the business. In the first group are the legal department and the accounting department. In the second group are the purchasing, the ore and coal, the manufacturing, the sales, and the traffic departments.

Detailed discussions of the organization, function, and operation of these several departments are given in the appropriate volumes of this series. The following diagram makes plainer the above analysis of the operating organization.

Organization Chart

Proprietorship organization

Character	Management	Executive
Individual	Individual proprietor	Individual proprietor A manager
Partnership	Partners	Partners Managing partner A manager
Corporation	Directors	Executive committee President
Co-operative society	Committee	Executive committee President

Operating organization

Departments	Heads	Divisions
Legal	General counsel	Functional Territorial
Accounting	Comptroller	Accounts Credits Collections
Purchasing	General purchasing agent	Materials Construction Supplies
Extractive ore, coal, etc.	General manager	Ore Coal Lumber Etc.
Manufacturing	General superintendent	Experiment Designs Power Tools Shop
Sales	General sales agent	Advertising Estimates Selling Orders
Traffic	General manager	Routes Rates

TEST QUESTIONS

1. What is the relationship between proprietorship and operating organization?
2. By what principles is the operating organization determined?
3. In what respects is the executive alike in all of the types of operative organizations?
4. What are the advantages respectively of the single and the plural executive?
5. How is responsibility to the proprietorship secured?
6. What are the two main functions of an executive?
7. What is meant by functional organization?
8. What are some of the main departments required under a functional system of organization?

CHAPTER XI

BUSINESS COMBINATIONS AND TRUSTS

Reasons for Combinations

Business enterprises, whether controlled by the individual proprietor, the partnership, the corporation, or the co-operative society, are entirely independent of each other in their working operations except in so far as they voluntarily form alliances of more or less permanence and of greater or less vitality. Indeed, until the middle of the last century their individual independence was so marked and dominant that the theory of political economy as well as of law was largely based upon this idea. With the introduction of machinery, the bringing of large groups of capitalists and workingmen into closer proximity, and the development of the railroad and the telegraph, industrial enterprises of certain classes were brought into direct competition, and the struggle for existence was thus extended to the business field.

As a result of the new conditions, various forms of unions have been originated and adopted, all having a common purpose, namely, to subserve the interests of the parties to the organizations. The form of union adopted varies with the character of the parties to it, with the purposes to be attained, and with the local conditions in the various countries in which they are operated. But all of these organizations, whatever their form, have one feature in common, namely, they unite business enterprises into a higher type of organic union. Just as individuals unite into partnerships, corporations, or co-operative societies, so business enterprises join

together to form business alliances of various kinds and for various purposes.

The more important of these alliances are the association, the combination, the trust, the holding corporation, and the leasing company. In addition to these, informal alliances are sometimes devised, such as the community of interests; and finally a complete merger may take place, in which case the alliance is made direct and permanent and the formerly independent or partially independent business enterprises lose their identity, being permanently amalgamated into a new union of greater size and greater complexity.

The Association

The association is a voluntary alliance of business enterprises for the purpose of furthering their common interests. Its members may ordinarily withdraw at any time, and usually each one is required to pay a small annual fee in order to continue in the organization. The association works through a central board of directors or a central committee, elected from the membership. Its efficiency depends upon two things: (1) the activity of the central committee; and (2) the co-operation of the individual members. If the central committee is inefficient or if the members fail to co-operate, the association is a failure. If, however, the committee is active and vigilant and is supported by substantial contributions resulting in a full treasury, it is possible to accomplish much even though the individual members of the organization devote themselves entirely to their own private interests.

TYPES OF ASSOCIATION

The association has two principal types, the first being composed of various kinds of business enterprises within

a given territory, and the second, of business enterprises of the same character with little or no regard to geographical location.

The first type is illustrated by local commercial clubs and chambers of commerce of various cities, and the second type, by the trade and manufacturing associations of various states and of the United States where membership is confined to one branch of business activity. The first type varies greatly in size and efficiency, but all have the common characteristic of uniting business enterprises of many kinds within the same territory. Some of these associations are informal in character, while others operate under a charter provided for associations working for general purposes rather than for direct pecuniary profit to the members. To illustrate the work of this type of general association, the following organizations have been selected: The Chamber of Commerce of Champaign, Illinois, and the Merchants' Association of New York City.

(1) Commercial Clubs

The Champaign Chamber of Commerce was founded in 1900 by the retail merchants of the city for the purpose of establishing and maintaining a co-operative credit-rating society. Gradually other interests sought admission to its membership and with its enlargement came an extension of its activities about five years after its foundation. It was then incorporated under the Illinois act for societies not operating for pecuniary profit, and subsequently has still further enlarged its work until its scope of operation is now co-extensive with the political, social, and business activity of the city. Within recent years it has been instrumental in securing early closing during the summer months and has taken a

prominent part in securing improvements in the city government, especially in the fire department, the parks, the water system, and pavements. It has been the medium of securing for the community more favorable conditions in express and railway rates; it has assisted in locating some important manufacturing establishments in the city, and is carrying on a movement looking towards the improvement of the roads in the locality.

Thus the Champaign Chamber of Commerce, beginning as an organization of retail merchants chiefly for selfish purposes, has by the process of natural evolution become an association representing all the interests of the city and devoted to the general welfare rather than the special interests of a class.

The Merchants' Association of New York City is a second example of a general business association, representing this type in its most comprehensive form. This association was founded in 1898 "to foster trade and commerce and the interests of those having trade, business and financial interests in common in the State of New York and elsewhere, to reform abuses relative thereto, or affecting the same, to secure freedom from unjust or unlawful exactions, to diffuse accurate and reliable information concerning matters relating thereto or otherwise, to procure uniformity and certainty in the customs and uses of trade and commerce, to settle differences and to procure uniformity of opinion and action and co-operation between its members, to procure a more enlarged, united and friendly intercourse and action between business men, and to do such other and further acts and things relating thereto which may be found necessary or convenient, so far as the same are permitted by the laws of the State of New York to corporations organized under this act." [1]

[1] Year Book, Merchants' Association of New York, 1910.

It is chartered under the membership corporation law of New York and consequently is managed by a board of directors and the usual executive officers. Upon the operating side it works through committees, some of which are permanent and some temporary. The committees are as follows:

Executive
Commercial law
City conditions
City plan
City transportation and terminals
Currency
Customs service and revenue laws
Domestic commerce
Pollution of state waters
Protection of industrial property
Telephones
Water supply
Gas and electricity
Express transportation
Foreign and colonial commerce
Harbor and shipping
Insurance
International arbitration.
Judicial administration.
Library
Postal affairs
Taxation and finance
Terminals and port charges

The committee list shows in a general way the varied activities of this association. The organization has been especially active in the following lines: Special passenger rates for merchants visiting New York, western freight rate cases, Chattanooga rate case, port differentials, express rates in New York State, uniform bill of lading, removal of steam railway tracks from the streets of the city, improving waterways and harbors, establishment of a permanent tariff commission, and city administration.

While the Merchants' Association of New York City is founded upon the territorial idea, it recognizes the special interest of trade groups by arranging for informal meetings of the various lines of commercial and indus-

trial activities in the city. For example, during the year 1909 informal meetings of the jewelry and allied trades, woman's apparel trades, and the white goods division of the dry goods trade, were held for the purpose of discussing topics of special interest to these groups. It is the plan to continue these group meetings until all the important trade groups in the city have been reached. The inauguration of this policy had the effect of increasing the membership, thus securing the interest of many business enterprises not attracted by the general association.

(2) Trade and Manufacturing Organizations

The second type of organization caters to the special interests of a particular industrial or commercial group. The scope of its work is more limited in character, but it gains in efficiency where it loses in breadth. These associations are exceedingly numerous and all are formed upon essentially the same principle and operated in the same general way. Among the organizations the Illinois Manufacturers' Association has been selected for purposes of illustration. This organization was founded in 1898 and operates under an Illinois charter provided for such societies. It has a board of directors and the usual list of executive officers. Its membership is made up of manufacturers of all classes having plants located within the state, and in addition includes a few manufacturers whose plants are situated outside the state but whose work is intimately connected with industrial conditions within Illinois. Like other associations, it operates chiefly through committees, some of which are permanent and some of which are temporary.

During the year 1910 this association was interested especially in two particular projects: (1) in a conference

of industrial and commercial organizations for the purpose of securing the repeal of the corporation tax law; and (2) in a conference of shippers and commercial organizations for the purpose of opposing an advance in freight rates both east and west. At each of these conferences representatives of business enterprises from all parts of the country were present and a general discussion of the propositions was held in open meeting. As a result of the first conference, that on corporation tax law, a committee was sent to Washington to present the views of the association to the federal Congress. A series of resolutions was drawn up, discussed, and finally adopted, and a committee of eleven was appointed for the purpose of presenting the resolutions. While it is impossible to ascertain just what influence this conference had, it is claimed by the association that it resulted in suppressing the publicity clause of the Federal Corporation Tax Act.

The second conference was attended by a large number of representatives of business enterprises located chiefly in Illinois and the Central West. At this meeting the general subject of the economic effect of advanced freight rates and the legal aspects of the question were discussed, and as a result a series of resolutions was adopted to the following effect:

1. That the income of the various railroads has been increasing during the past ten years;

2. That during the first seven months of the year 1910 the net income of the principal trunk line railroads had also increased;

3. That in their opinion a reduction rather than an advance was demanded by present conditions.

Accordingly all the railroads in Official Classification Territory were asked to suspend the proposed advance

in commodity rates and submit the question to the Interstate Commerce Commission for arbitration to determine whether any general advance in rates was reasonable and necessary. For the purpose of carrying these resolutions into effect a committee of fifteen, representing the general conference, was appointed and entrusted with the duty of presenting the views of the conference to the Interstate Commerce Commission and the railroads. In addition to the two important conferences above described, the Illinois Manufacturers' Association, through its permanent organization, is constantly engaged in activities for the purpose of protecting the interests of manufacturers of the state from the various industrial interests with which they come into conflict, and at the same time for improving the conditions under which the manufacturers are working.

Again in 1914, after the outbreak of the European War, this association made strenuous efforts to capture some of the foreign trade that had been cut off because of the war. It appointed committees to investigate the various trade questions involved, and co-operated with other associations and commercial bodies working along the same lines.

In common with the commercial associations, the Illinois Manufacturers' Association, it will be noticed, works chiefly through indirect methods of influencing other organizations and especially the state legislature and the national Congress. Whenever any measure is proposed which, in the opinion of the association, would be detrimental to the interests of manufacturers, the views of the organization are presented through a committee of the association to the proper committee of the legislature. Whenever legislation is proposed in which they are interested they assist in securing such legisla-

tion. To show the extent of the work which has been undertaken by the association, the following quotation from a pamphlet issued by this organization is added:

Our Association stopped the publicity required by the Federal corporation tax law.

We took the initiative in securing the appointment of a state commission to draft an employers' liability measure to submit to the next Illinois General Assembly.

We secured for manufacturers of this state reasonable factory inspection, hazardous machinery legislation, and defeated a very unfair measure that it was attempted to put through the legislature.

We are now opposing the proposed increase of from twelve to sixteen per cent in the freight rates on coal in Illinois and Indiana, because an advance at this time is unwarranted by conditions and cannot be added to cost of marketing our product.

We have a committee which is working out a plan to take care of the refuse and discarded material.

We have created a bureau whose influence will be used to minimize thefts in your plant.

We have a committee that has started an agitation to secure the best possible public highways for the $7,000,000 taxes which the property owners of this state pay every year for that purpose.

We are agitating the rearrangement of railroad terminals in Chicago so that freight can be handled more expeditiously, which means economy.

The Combination

The combination, like the association, is made up of business enterprises which are otherwise independent. In the case of the combination, however, these enterprises are generally engaged in the same line of industrial activity. It differs from the association in that it imposes certain direct obligations upon each of the members. Consequently, in order to be successful, a combi-

nation must embrace a large majority of all business enterprises of the same kind within a given market.

A combination is held together by an agreement or contract specifying the terms under which the members unite into the union. Each enterprise thus loses a part of its independence, but retains its liberty in all points not covered by the terms of the agreement. When a member of the combination breaks the rules of the organization, it nullifies to that extent the work of the organization. Such an organization may be either legal or illegal. Wherever they are legal the articles under which they operate constitute a contract and may be enforced as other contracts. Wherever such organizations are illegal, their permanence and efficiency depend entirely upon the willingness of each of the members to live up to the terms of the combination.

In the United States such organizations from the beginning have been held to be either invalid or criminal. In the first case the state and national authorities will not assist an organization in its efforts to secure obedience to the general agreement. In the second case the state and national administrations will, under proper conditions, take steps to punish the members of such organization for becoming members of a criminal organization.

PURPOSES OF COMBINATIONS

Combinations are formed for the purpose of directly increasing the business prosperity of the various members. This may be accomplished either by lessening competition, thus enabling the industry in which the combination is formed to secure better prices, or by improving the operating conditions, thus lowering the cost of production. Since a combination is at best a temporary affair and the members retain their own individual

rights except in so far as the agreement or contract extends, it is usually impossible to secure economies in manufacturing and ordinarily impracticable in either purchasing the materials or selling the goods. Consequently a combination is generally forced to direct its energies toward lessening competition and securing increased prices.

CLASSES OF COMBINATIONS

Combinations are ordinarily classified in accordance with the means which they take to secure the ends for which they are formed, and may therefore be divided into the following groups:

1. Price combinations
2. Production combinations
3. Geographical combinations
4. Combinations for sharing the business
5. Combinations for sharing the profits

The first three classes of combinations are sometimes called "limiting combinations," because they accomplish their purpose by limiting the activity of the members in regard to prices, output, or territory. The last two classes, on the other hand, accomplish their purpose by sharing in predetermined proportions the business or the profits and are therefore called "sharing combinations," or, on account of their leading characteristics, "pools."

In a price combination the agreement provides for a certain minimum price, below which no member of the combination can sell a specified line of goods. Consequently this form of organization is adapted to those lines of industry in which goods are of a staple quality and standard designs. In any other line it has the effect of increasing competition in the quality of the goods while limiting it in regard to the price. Price combina-

tions, therefore, are of importance in only a comparatively few lines of manufacturing.

A limitation of output has the same effect as a price combination in an indirect way—by limiting the production the price can be maintained. For example, if the output of factories producing a certain line of goods be limited to two-thirds of their capacity, the supply of goods on the market will be decreased and the price will automatically rise to a higher level. This form of combination is therefore useful wherever it is more convenient to limit the output than it is to limit the price.

Wherever it is difficult to limit either price or output, and the factories are located in distant territories, the third form of combination is sometimes used. The territory is divided into districts and each manufacturer is assigned a particular territory within which he may supply the trade without competition from any other producer. Customers from without the territory of any particular member of the combination are either referred to the manufacturer within the district to which the consumer belongs or the order is nominally filled by the manufacturer receiving it, but the actual production of the goods and the profit on the same are assigned to the proper member of the combination.

In certain industries neither of the above forms of combination is practicable. Hence manufacturers arrange in advance to share whatever orders may come upon the market upon the percentage basis. For example, Co. A will receive 15 per cent, Co. B 10 per cent, Co. C 5 per cent, and so on, until the total production is provided for. Whenever orders are received they are either divided directly and assigned to the companies in the proper proportions or the orders are assigned to par-

ticular manufacturers in such a way that their proper quota is maintained.

In the profit-sharing combination each member is entirely independent of the others in manufacturing the goods and usually in their sale. The total profits of the business of an entire group is, through a central accounting office, ascertained and distributed among the various members in accordance with a scale agreed upon at the establishment of the organization. The members of the combination are interested not in their own individual profits, but in the combined profits of the entire organization. Hence it is for the interest of each party to maintain the prices and limit the output so far as necessary in order to make the profits of the entire organization as great as possible. The member who cuts prices for the sake of increasing his own output, increases his own profits, but he does this at the expense of the profits of the other members. He finds that his share of the profits, as determined by the central office, is increased by maintaining a price policy that is favorable to the business interests of the industry rather than of his own particular plant.

In the United States the combinations have two marked disadvantages: (1) they are unable to effect economies in production; and (2) they are non-enforceable at common law, and since about 1880 they have generally been made illegal under statute law. While in certain instances they have been remarkably successful for a limited period, generally they have been short-lived and at their termination conditions in the industry have been so disadvantageous as to overcome partially if not wholly all the advantages which had been secured during the short period of the combination. Consequently the business interests have sought other means of securing

the end and have generally adopted in recent years some one of the following forms of organization.

Trusts

GENERAL CHARACTERISTICS

In the United States the trust was the direct successor of the combination. It was devised by the Standard Oil Company in 1879 and is generally accredited to Mr. Dodd, the general solicitor of that corporation. In theory the trust is so simple that it is difficult to understand now why it was not devised earlier. In the first place, all business enterprises becoming parties to a trust are incorporated if they are not already corporations. A board of trustees is then arranged, which issues trust certificates equal in amount to the sum of all the shares in the various corporations. Trust certificates are then exchanged for the shares of stock or so many thereof as become parties to the trust. It is necessary that over one-half of the voting shares in each one of the corporations be exchanged for trust certificates in order that the trust may work successfully. The board of trustees holds a majority of the voting stock of each of the corporations, elects the several boards of directors, and through the said boards controls the business policy of each one of the subsidiary corporations. The holders of the trust certificates elect the trustees, make the by-laws, and receive the dividends declared upon trust certificates in exactly the same way as the shareholders in the ordinary corporation.

ADVANTAGES OF A TRUST FORM

The trust thus possesses all the advantages of the combination, and in addition certain others of great im-

portance which the combination never was able to obtain. Like the combination, the trust could regulate and maintain prices, limit the output, or divide the territory whenever such a policy was thought advisable. It could distribute the work among the several corporations, and by virtue of its organization the profits were shared in proportion to the trust certificates held by the former shareholders in the several corporations. Furthermore, whenever practicable, all of the shares were thus exchanged and the trust became practically a permanent organization; it was therefore possible to secure all the economies of centralized management and concentrated production.

CENTRALIZED ADMINISTRATION

The trustees controlling the election of the directors in the subsidiary corporations could consolidate the administration by appointing a general sales agent, a general manager for the plants, a general auditor, a general treasurer, and other general officers. Consequently standard methods in all departments could be introduced and a comparative method of securing efficiency installed and operated. The production could be concentrated in the plants most economically located and operated, and plants operating with less efficiency could be dismantled or sold.

SUCCESSFUL BUT ILLEGAL

On account of these advantages, the success of the Standard Oil Trust and of its immediate predecessors was so pronounced that a considerable number of trust organizations was formed and this became the characteristic method of uniting business enterprises during the decade from 1880 to 1890.

That this form was not more widely adopted was due to two causes: (1) the difficulty of adjusting the interests of the several business enterprises united; and (2) the decision of the supreme courts in New York and Ohio to the effect that the trust form of organization was illegal. It was therefore abandoned and the consolidations operating under this particular form of organization were converted into a new type of organization, which will now be described.

The Holding Corporation

CHARACTERISTICS

The holding corporation is in many respects comparable to the trust. It consists in the incorporation of a company under the laws of some one of the several states, with a charter permitting the enterprise so organized to hold shares of stock in other corporations as well as physical assets. The holding corporation dates from as early as 1832 when the Baltimore & Ohio Railroad Company was authorized by the state of Maryland to subscribe to shares of stock in the Washington Branch Road. This method was used on a large scale by the Pennsylvania Railroad Company as early as 1853, and it was adopted by that company in 1870 as an appropriate method for controlling the Pennsylvania lines west of Pittsburg.

From this time on it became a fairly common instrument by which business enterprises, especially in the railroad field, were consolidated into one organic union. Until 1888, however, it was generally considered necessary to obtain special authorization for the purpose of holding shares of stock in other corporations. In that year the state of New Jersey provided by an amendment to the corporation act that companies chartered under

her laws might in certain cases hold stock in other corporations. In 1889 the law was further amended by providing that corporations, where their charter so provided, might hold stock in corporations in which they were directly interested, and in 1893 the act was made general, permitting any corporation to hold stock in any other corporation.

The holding corporation then became the direct successor of the trust. It was not, however, adopted in a general way until about ten years after it was first generally authorized, but during the period from 1898 to 1901 a large number of holding corporations were organized and since that time it has become the characteristic form of organizing business enterprises into a permanent form of union.

STRUCTURE

In its structure the holding corporation is identical with that of the ordinary corporation. It is composed of a group of shareholders who own stock, elect the directors, receive the dividends, and possess the same rights and are under the same obligations as the shareholders of a regular corporation. It differs in one important respect. Its property account is made up of shares of stock in one or more corporations rather than the real estate, buildings, and other assets of the ordinary corporation.

The holding corporation receives its income from the dividends declared by the corporations whose shares it holds, and such income is then declared in dividends to its own shareholders.

CONTROL OF SUBSIDIARIES

Like the trust, the directors of the holding corporation elect the directors of the subordinate corporations and

thus are able to determine the business policy of each one of its subsidiary companies. Furthermore the directors of the holding corporation, through the directors of the subsidiary corporations, have the power, and generally make use of it, to direct the operations of the subordinate companies in accordance with the general plan of administration, provide for a general purchasing department, a general sales department, a general accounting department, and for the organization under a centralized office of all the manufacturing. The holding corporation thus indirectly controls not only the business policy, but the actual operating organization of each one of the companies in which it holds a majority of the stock.

MONOPOLISTIC HOLDING CORPORATIONS

It will be noticed that the holding corporation may, by extending the sphere of its influence, gain control of an entire industry and thus become a practical monopoly. On this account certain of the holding corporations have been attacked under the Sherman Anti-Trust Law, which declares every contract or combination in the form of a trust or otherwise, or conspiracy in restraint of commerce among the states, illegal. Under the authority of the Sherman Act the Northern Securities Company, the Standard Oil Company, the Dupont Powder Company, the Union Pacific Railway Company, and other holding companies have been dissolved by order of the Supreme Court of the United States.

While monopolistic holding corporations may, through the activity of the federal government, be dissolved, it is apparent that unless they obtain a monopoly holding corporations are legal instruments for centralizing both the proprietorship interests and the operating organiza-

tions of those business enterprises which desire to associate in this way.

The Leasing Company

In this form of organization one of the companies, generally the one in the more dominant position, leases those companies with which it seems desirable to form an organic union. The lease may be either for a temporary period or for so long a period that it practically amounts to a perpetual relation.

The leases are of two kinds: (1) the direct money rental and (2) the contingent lease. In the first type all of the net revenue arising from the operation of the second company accrues to the leasing company. In the second type the profits are shared between the two companies in accordance with the terms of the contingent lease. In either case the leasing company controls both the business policy and the operating organization of the company which it has leased.

The lease system has been used chiefly among railroads. In many cases, owing to the difficulty of fixing the terms of the lease, the central company has been obliged to purchase a considerable portion of either shares or bonds in order to make the terms of the lease sufficiently favorable to itself. It is obvious, of course, that whenever a railroad becomes involved in financial troubles, it is particularly easy for some stronger railroad operating in the same territory either to purchase a partial interest in it or to advance money to it and thus be in a position to dictate the terms of the lease. In the case of manufacturing and commercial establishments the lease system has never become of great importance.

Community of Interests

The original Standard Oil Trust was formed in 1879. A group of men interested in the petroleum industry had gradually purchased a partial or controlling interest in a considerable number of refineries. There was thus no organic union between these business enterprises, but on account of common ownership the virtual consolidation of the various companies was brought about.

Such an informal organization is known as a community of interests. This method of uniting business enterprises has been adopted in a considerable number of cases where no direct form was found feasible. In 1902, when the Northern Securities Company was dissolved by order of the Supreme Court, the continuation of the control exercised over the general administration of the Northern Pacific and the Great Northern Company was perpetuated by this principle. The stock held by the shareholders of the Northern Securities Company was called in and destroyed and in return for these certificates a proportionate interest in both of the companies was transferred to the Northern Securities Company shareholders. Thus the two companies had a common body of shareholders, or a community of interests.

The community of interests enables a common group of shareholders in several companies to dominate and control the business policy of the company, but ordinarily does not permit of the inauguration of a centralized administration. It is used only when no other form of union is practicable.

The Merger

Under certain circumstances the union of related companies may become so complete and permanent that it is thought desirable to abolish the corporate organization

of the subordinate companies, transfer their assets to the central company, and thus bring about a complete merger of all of the companies in the organization into one permanent union, generally in the corporate form. In such cases the organization, both from the internal and the operating standpoint, reverts to the original type of the ordinary corporation.

TEST QUESTIONS

1. What conditions have brought about the combination and trust movement?
2. What are the chief classes of combinations?
3. What is the nature of an association?
4. What two types of associations may be recognized?
5. What are some of the services of local chambers of commerce?
6. What are the chief functions of trade and manufacturing organizations? How do they serve modern business?
7. What are the five chief types of combinations?
8. According to what characteristics may they be grouped into two main divisions? What would be included under each division?
9. Explain by what methods the combinations effect their purpose.
10. What is meant by a trust? How does the popular conception of a trust differ from the legal conception?
11. Should regulated trusts be legalized?
12. What are the characteristics of a holding corporation?
13. How does the holding corporation differ from a trust?
14. What has been the attitude of American governments toward the holding company?
15. In what line of business is the leasing company used to a considerable extent?
16. What is meant by a "community of interests"?
17. When does a merger exist?

CHAPTER XII

COMPARATIVE EFFICIENCY OF THE VARIOUS TYPES OF BUSINESS ORGANIZATION

Importance of the Type

In the preceding chapters the several types of business organization have been described somewhat in detail for the purpose of showing the individual characteristics of each. Special attention has been called to the advantages and disadvantages of the several forms in order that the attention of the reader might be directed toward the availability of each of the types for the purpose of organizing and managing individual business enterprises.

While organization is not an end in itself, it cannot be denied that the type of organization selected has an important relation to the efficiency of the management. The organization may be compared to the automobile, to take a familiar example; the management, to the chauffeur. A skilled chauffeur can operate a poorly constructed automobile fairly well, while a person unskilled in the act of running a motor car cannot operate even the highest type of car at all. The skilled chauffeur and the well-constructed car represent, it will be readily admitted, the ideal in motor-car operation.

The same general principle, while not so obvious, applies with equal force in the domain of business organization. Like the automobile, however, the business organization needs to be well constructed and, like the automobile again, it needs to be adapted to the task which

it is to be called upon to perform. Certain types of cars are adapted to certain purposes. The racing car, while efficient upon the track, could not be compared with the touring car for pleasure riding over the boulevards. The holding corporation is admirably adapted to certain purposes, but with all its excellences, it would hardly be selected for the purpose of controlling and managing a blacksmith shop located in an out-of-the-way village.

Tests of Efficient Organization

What then are the tests of all effective and appropriate business organizations? The object of a business organization is to facilitate the operation of a particular business enterprise so that the business enterprise may yield to its owners the highest possible permanent rate of profits on the capital invested. An organization should, therefore, in order to meet this requirement, be inexpensive to install and efficient in operation, so that, as a result of its operations, a reasonable amount of goods may be produced and marketed. Based upon the above general principles, the following specific tests may be found of service in determining the suitableness of a given form of organization to any given business enterprise which it may be proposed to establish and operate:

1. Facility of formation
2. Legality of organization
3. Adaptability to raising the proper amount of capital
4. The risk to individual investors
5. Permanence of the organization
6. Ease and efficiency of operation

Facility of Formation

The individual proprietor exists. All other types of business organization are created by the deliberate and

conscious effort of persons or groups of persons who have united for purposes of associated profit. A small partnership is not usually difficult to form; a large one is. As a result there are many small partnerships and few large ones. With the corporation the case is different. The small corporation is easy to form and the same is true of the large one in so far as the intrinsic conditions are concerned. This results from the fact that none of the shareholders, as such, are directly connected with the management. Theoretically the shareholder in a small corporation has no more connection with its business affairs than the shareholder in a large one. The difficulties connected with the formation of a corporation increase with the number of shareholders associated together, but not in proportion to the actual increase, while with the partnership the difficulties increase with an increase of numbers in some sort of geometrical proportion.

On the basis of the first test, the partnership is limited to undertakings in which relatively few persons are financially interested. This advantage in favor of the corporation is somewhat lessened by the fees usually imposed upon the original issue of capital stock and the annual franchise tax imposed in some states. Corporation taxes, however, increase with the amount of the capital stock issued rather than with the number of stockholders interested. The promoter should in all cases first investigate the costs and difficulties attendant upon the formation of the available types of business organization and select that form which, other things being equal, may be formed with the greatest ease and facility.

LEGALITY OF ORGANIZATION

The type most easily formed may not, however, be available, owing to legal restrictions. Those instrumen-

tal in determining the form should, early in their proceedings, take into consideration the law of the land. Partnerships are generally in favor in all states and jurisdictions. In certain cases, however, the law disapproves of the partnership and approves of the corporation. The most conspicuous example of this conscious favoring of the corporation form exists in the banking business. Formerly private individual bankers, partnership banking firms, and corporate banks were equally favored in practically all jurisdictions. In 1862 the United States adopted the policy of establishing national banks and at the same time decreed that all such banks should be corporations. Since that date many of the states have adopted provisions requiring that all those carrying on the business of banking within their respective limits should incorporate under the state law. Building and loan associations likewise are good examples of business enterprises that quite generally are required by law to operate as corporations.

The law in certain cases not only prescribes the form of organization that must be used, but also forbids the formation of certain kinds of business enterprises at all. As a general proposition it is contrary to law in the United States to form either a combination or a trust. Holding corporations, consolidations by lease, and complete mergers in the corporate form may or may not be legal, dependent upon whether the object is to form a monopoly or a combination in restraint of trade on the one hand, or a legitimate combination on the other.

(1) Monopolies

A monopoly exists whenever a single business enterprise, whether in the form of an individual proprietorship, partnership, corporation, trust, or other form of

business organization, controls the sale of any special commodity within any given market. Having control of the sale of the article, the monopoly is able to fix the price arbitrarily. Under such conditions, the price is, of course, fixed at that point which, under the given conditions of demand, yields the maximum net profits to the owners of the business enterprise in question.

Monopolies are classified in many different ways, but the simplest classification is that based upon the source of the monopoly power. According to this classification, monopolies are either legal, natural, or industrial. Each of these needs a brief description, as the name is not in itself explanatory.

(a) Legal Monopolies.—A legal monopoly exists only by a direct or indirect grant from some governmental agency to some particular business enterprise. The best examples of legal monopolies are to be found in the "grants" of the English sovereigns, during the later middle ages, to individuals or groups of individuals, generally in exchange for a cash payment, aid in raising and equipping armies, or other assistance. Such grants were called "patents of monopoly."

At the present time legal monopolies are not common except in the form of patents and copyrights. Such monopolies, however, owing to the activity of inventors and writers, are usually of minor importance. The competition between rival patented articles and rival books is sufficiently active, except in isolated instances, to prevent any arbitrary control over price.

A third example of legal monopolies is found in the municipal franchises so common in recent years. A corporation is granted by a municipality the exclusive right to supply electricity, gas, water, or local transportation to its citizens. Such companies then possess a legal mo-

nopoly. It is not usual, however, to grant such monopolies without retaining at least the power to fix the rates which the holders of the franchise may charge and the conditions of service under which they must operate. In such cases the owners are said to operate under a regulated monopoly.

(b) Natural Monopoly.—A natural monopoly is more difficult to define. Generally speaking a natural monopoly is based upon natural conditions. A careful analysis of the term "natural monopoly" and of the examples of natural monopolies usually cited will show that natural monopolies are in reality due to the advantages flowing from the centralized management of certain enterprises operating in natural resources usually concentrated in a small geographical area. The anthracite coal industry is ordinarily cited as a typical example of a natural monopoly. Formerly the anthracite coal industry was an example of an intensely competitive industry. Soon the disadvantages of competition and the advantages of unified ownership and operation became so obvious that the separate holdings in the anthracite field were gradually consolidated, until at the present time the competitive element has been largely eliminated. The price of anthracite coal is, however, determined not by arbitrary action, but by competition. Formerly it was competition between the various owners of anthracite mines. At the present time it is the competition of anthracite with bituminous coal that finally determines the price.

Public utilities, such as water, gas, electricity, railway, telephone, and telegraph businesses tend to become natural monopolies wherever they are not made legal monopolies. The fundamental cause is identical with that of the operations in the anthracite field. The operation of com-

petitive waterworks, gas plants, telephone systems, electric traction routes, and other public utilities within the same territory is both wasteful and inconvenient. Each community naturally wishes to secure the conveniences of modern living in the cheapest and most economical way. The owners of rival plants find that their expenses are increased by competition and the revenues are at the same time lessened. Such enterprises, therefore, naturally consolidate and hence are called natural monopolies.

(c) Industrial Monopolies.—An industrial monopoly is the name given to those combinations, trusts, and holding corporations where the process of consolidation has gone so far as to embrace within the ownership and control of one organization an entire or almost an entire industry. Such monopolies are not based upon law and hence are not legal monopolies. It has been contended by some that they are fundamentally based upon economies and conveniences and are, therefore, natural monopolies in fact, if not in name. This contention has been ably supported by argument, but it may be noted here that such contentions cannot be proved in this way, but must rather submit themselves to the slower but surer arbitrament of time. A half century of experience with industrial monopolies will enable us to determine whether they are a new variety of natural monopoly or artificial creatures constructed and operated to secure to their owners an inequitable portion of the national dividend.

If such monopolies prove to be founded upon national laws, they will then be classed with the public utilities as natural monopolies and governments generally will revise their laws relative to monopoly, permit such organizations to be formed, but subject them to strict gov-

ernment supervision. They will then become, like most public utilities, regulated monopolies.

(2) Restraint of Trade

The term "restraint of trade" has a long legal history reaching far back into the Middle Ages. Historically speaking, contracts in restraint of trade, under the English common law, have been held invalid in some cases and criminal in other cases. In the first case the state would permit such contracts but would not assist in their enforcement; in the latter case the state has absolutely prohibited the existence of such contracts. In accordance with the general tendency to enact into state law the established principles of the common law, the United States Congress in 1890 passed the Sherman Anti-Trust Act, which, among other things, provides that "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations is hereby declared to be illegal." This statute has been vigorously enforced, especially since 1900, with the result that at the present time the term "restraint of trade" has been legally adjudicated in a considerable number of cases by the highest court in the land.

Until 1911 the Supreme Court inclined toward construing the term strictly. Consequently every act interfering or tending to interfere with the utmost freedom of competition between business enterprises was held to be forbidden by the law. In the famous Standard Oil decision handed down in 1911, the Supreme Court, in an opinion written by Chief Justice White, took the ground that the term "restraint of trade" ought to be given its historical meaning as shown by a review of the important decisions arising under the common law. This

changing in the attitude of the court had the result of giving the term under discussion a meaning more in accordance with the demands of modern business conditions. The later interpretation of the phrase "restraint of trade" held that only such acts as unreasonably interfered with the freedom of competition were included within its prohibitions. In other words it was construed, quoting the words of the court, in the "light of reason" rather than in the spirit of slavish devotion to the letter of the law.

As a result of this change in interpretation, there has come a corresponding change in the attitude of the federal administration and the authorities having charge of the enforcement of the anti-trust acts in several of the states. Whereas restraint of trade was formerly looked upon as a distinct and separate category in the business world, it is now considered by the administration and the courts in its inevitable and necessary relationship to the creation and perpetuation of industrial monopolies. Acts which tend to establish or maintain industrial monopolies are *ipso facto* acts in restraint of trade. Organizations created for the purpose of establishing and operating industrial monopolies in interstate trade are illegal under the Sherman Act and are therefore prohibited by law. To form such organizations men must combine together, consolidating their property rights into a unified business enterprise of some form. "Any combination to do an unlawful act or a lawful act by unlawful means" is a conspiracy, and where such acts are done in connection with trade and commerce, they are conspiracies in restraint of trade. A conspiracy in restraint of trade, therefore, is an act or acts through which a number of individuals, otherwise independent and unrelated in their business interests, unite to accomplish some unlawful act

or a lawful act in an unlawful manner. Under this clause of the Sherman Anti-Trust Act individuals may be held responsible for uniting together for the purpose of restraining interstate and foreign trade or commerce.

In order to define more clearly the scope and meaning of the Sherman Act, Congress enacted, in 1914, the so-called Clayton Act, entitled "An act to supplement existing laws against unlawful restraint and monopolies," etc. In connection therewith the Federal Trade Commission, a body composed of five persons to be appointed by the President, was created and authorized to enforce the provisions of the several anti-trust acts. The commission was given power to make investigations, conduct hearings, and issue orders to persons and organizations found guilty of restraining trade by unfair methods of competition or other unlawful acts or practices, to cease and desist from the same. In case of failure to comply with the orders of the commission, the Circuit Court of Appeals on information by the commission is authorized to review the proceedings and to enforce, modify, or set aside the orders as in its judgment shall seem desirable.

The creation of the Federal Trade Commission will, it is expected, do much to clarify the business situation, remove many of the uncertainties that have in the past hampered the activities of business men, discourage the formation of industrial monopolies, and strengthen the hands of those business men, always in the majority, who are conducting their business enterprises in a legal, efficient, and equitable manner.

ADAPTABILITY TO RAISING CAPITAL

There is no particular in which business enterprises differ more widely than in the amount of capital necessary for their efficient operation. For some a few hun-

dred dollars is amply sufficient. For others the upper limit reaches into the hundred millions. In most industries the size of the most efficient plant and, as a necessary consequence, the amount of capital required are slowly but steadily increasing. In those industries requiring large-scale production, the organization must be selected with a view to its adaptability for collecting and combining a large amount of capital. Such organizations must appeal to a wide territory and to a large number of investors.

Occasionally the individual proprietor is able to command ample if not unlimited funds. For example, Henry H. Rogers built and equipped the Virginian Railway partly with his own funds and almost wholly on his own personal credit. The same may be said with equal truth of Henry M. Flagler and the Florida East Coast Railway.

Again some partnerships are in a position to finance large, if not the largest, business enterprises of the period in which they are in active operation. The Fuggers of the later Middle Ages and J. P. Morgan & Company of the present day are familiar examples.

The instances cited are, however, the exceptions rather than the rule. Generally if an enterprise demands a large investment, many investors must be associated together to furnish the necessary capital. The result of this condition, a condition so universal and far-reaching that it might well be termed a law, is to force all large-scale enterprises into the corporation form. As a general rule, small enterprises may choose among the three important kinds of business organization—the individual proprietorship, partnership, and corporation. Medium-sized enterprises must confine their choice to the partnership and the corporation. The very largest have

no choice at all; they must inevitably accept the corporate form.

The mobilization of investors in business is as important as the mobilization of troops in war. While the investment bankers are the active agencies in promoting such mobilization of investors, they, of course, are limited by opportunities for investment which they are permitted by custom, conditions, and law to offer to their constituency. Owing partly to intrinsic qualities and partly to the safeguards furnished by the states to corporate securities, investments at wholesale in every other form are unable to compete in the investment market with the standard issues of well-known corporations.

THE RISK TO INDIVIDUAL INVESTORS

As stated in an earlier chapter, the business enterprisers are expected to assume the financial responsibility for promoting and operating business enterprises, take the profits in case of successful ventures, and shoulder the losses occasioned by unsuccessful ones. While this general theory has never been perfectly realized in actual practice, it is nevertheless true that in the effort to create a risk-assuming class, separate and distinct from the other three great classes participating in organized production, the percentage of unsuccessful ventures has been lessened and efficiency in production greatly stimulated. While the present system has undoubtedly tended to minimize the hazards that naturally and persistently attend the investment of capital in business undertakings, it is still true that business is always risky and that those who undertake the responsibility of investing capital funds must be prepared to see a small percentage of the invested capital regularly and persistently lost in unsuccessful business ventures.

Modern business organization has not only recognized this fact, but has been partially successful in securing three important results, each tending to minimize the economic suffering that would normally result from the hazards naturally attending the investment of capital. These are (1) the development of a class of business enterprisers who, by the ability to foresee future tendencies, have been able to lessen the actual losses that would otherwise have occurred; (2) the segregation of the risk-assuming investors into two distinct subdivisions, one of which assumes comparatively little risk, while the other assumes the major portion; and (3) the introduction of the principle of limitation of liability in the form of the stockholding class.

(1) A Risk-taking Class

The development of a class of far-sighted business managers is in itself an achievement of the greatest significance and is one of the most important, if not the most important, of the influences determining the commercial supremacy among the nations. Such a class once created and established is likely to be maintained as long as the government under which it operates furnishes favorable conditions for its activities, provided that the race itself continues strong and virile. This results from the fact that the evolutionary forces which produced the managerial class under such conditions are continually operating and that in addition each generation of business enterprisers hands down its accumulated experiences and knowledge of business laws to the next in line. The managerial class, in directing the investment of new capital and the activity of each year's harvest of new workers in the industrial world, as well as in its management of existing business enterprises, exercises, it must be ad-

mitted, tremendous power. As a result of the efficacy of the evolutionary forces already noticed, it can continue to exercise such power only so long as it protects those interests committed to its charge from the risks and hazards that would, with less far-sighted vision, prove a ravenous destroyer of the capital and labor force of the country.

(2) Classification of Risk-takers

The business enterprisers as a risk-taking class have in the progress of time been divided into two subdivisions, each having its own function to perform. The first of these two subdivisions is composed of secured note-holders, the first mortgage-holders, and the owners of gilt-edged bonds. The second is composed of individual proprietors and partnerships who have borrowed on a mortgage a portion of their capital, and stockholders in the ordinary corporation. Mortgage-holders, note-holders, and bondholders take comparatively little risk and on that account receive a small but regular return on their investment. Individual proprietors, partners, and stockholders assume a large portion of the risks of industry and consequently receive a large but unduly fluctuating income.

(3) The Principle of Limited Liability

The introduction and general adoption of the principle of limited liability has had the effect of separating the second subdivision of the risk-taking classes, viz., the individual proprietors, the partners, and the stockholders, into two subordinate classes, the one of which includes the individual proprietors and the partners and the other, the stockholders. Those in the first of these two subordinate classes are required by law to make good

any losses occasioned by the operation of their business ventures out of capital funds which they may have invested in other enterprises. For example, investor A may own a grocery store worth $10,000, on which there is a first mortgage of $6,000. He may also own 100 shares of stock in a corporation operating a coal mine in a village near by, for which he has paid $10,000 in cash. Let us assume (1) that the grocery store fails, a receiver is appointed, and on investigation it is found that investor A owes for goods on account $3,000 and other bills amounting to $1,000. The stock, fixtures, etc., are sold at auction and realize $8,000. The condition of his grocery business then is found to be as follows:

STATEMENT OF AFFAIRS

Assets		Liabilities	
Cash	$ 8,000	Secured condition	$ 6,000
Deficit	2,000	Unsecured condition	4,000
	$10,000		$10,000

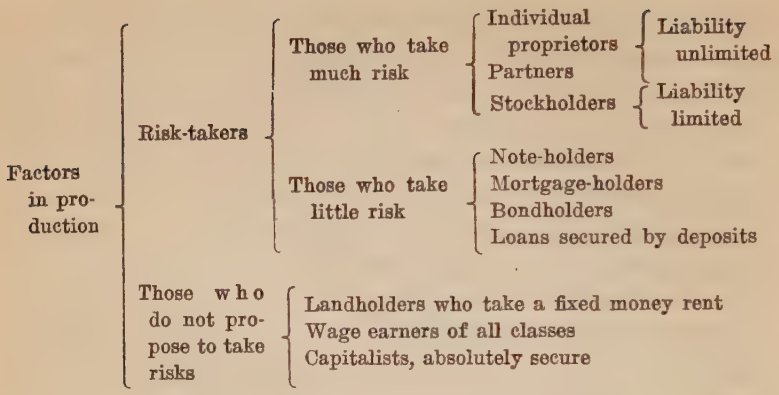
The receiver finds that investor A is the owner of certain shares in the neighboring coal mine and, under the law, sells so much of the coal mine stock as is necessary to pay the deficit arising from the operation and sale of the grocery store. The creditors are therefore paid in full. It may be noticed in passing that if investor A had had no investment except that in the grocery store, the unsecured creditors would have received only 50 per cent on their claims.

(2) Suppose the coal mining corporation fails. A receiver is appointed and it is found that the corporation owes $25,000 and that the assets are worth at forced sale only $10,000. There is $50,000 of full paid capital stock.

Before the enactment of the limited liability laws, investor A would have been responsible for his share of the net indebtedness, or $3,000. His grocery store would have been sold and the proceeds after paying the first mortgage would have been used to satisfy claims arising out of the failure of the coal corporation. If we may assume that the grocery store at forced sale would have realized only $9,000, investor A would have lost not only the coal mine, but his equity in the grocery store as well. Under the laws relating to the limitation of liability, investor A's investment in the grocery store would have been free from liability.

When an individual proprietor or a partner in a firm invests capital in any particular business enterprise, all of his capital, without regard to location or use, is legally liable for the losses incurred on account of the particular business in question. When a stockholder invests in a particular corporation, this investment "stands upon its own bottom," to use an expressive phrase, and any losses arising on account of this particular investment cannot be assessed upon the stockholder's other investments. The limitation of liability, in other words, has the effect of making each individual business responsible for its own obligations, and prevents such obligations from being satisfied out of funds invested in other businesses.

This limited liability feature may well be characterized as one of the props of big business. Business is full of risks. It is natural that risk-takers should be grouped in accordance with the responsibilities involved in the investment. The effect of the various customs and laws relating to the risks assumed by individual investors, partners in firms, mortgage-holders, bondholders, and stockholders is shown by the diagram on the next page.



PERMANENCE OF THE ORGANIZATION

That the organization should continue automatically as long as the business which it is formed to operate exists is axiomatic in business affairs and needs no argument to substantiate its validity. Business enterprises may be short-lived affairs or may be practically permanent. Those which are expected to live only a short time may well choose, other things being equal, a short-lived organization; on the other hand, those which are likely to be permanent ought to choose a form of organization that without unreasonable effort or expense may be continued without interruption forever. Wherever this general principle is observed, individual proprietorships and partnership will be used only for relatively short-lived organizations. Since corporations may be easily terminated and are under the laws of most states easily continued by the renewal of their charters, wherever perpetual charters are not permitted the corporate organization is adapted to both types of enterprises. For enterprises that are expected to continue permanently, the corporation has no competitors.

EASE AND EFFICIENCY OF OPERATION

Organization is, as has been repeatedly observed, not an end in itself. Its purpose is to facilitate the operation of the business enterprise with which it is connected. That organization is best, therefore, which offers least resistance to the motive forces responsible for its action. In some kinds of business, the individual proprietorship works most efficiently and with the least friction. In such cases, despite its temporary existence and unlimited liability, it should be chosen, provided, of course, that the individual proprietor is able to furnish the required capital. Generally speaking, however, those enterprises that require large capital, require at the same time the combined judgment and ability of a considerable body of men for efficient management. This necessitates the co-operation of the managerial group. In order to interest the managers of an enterprise in the success of their concern, it has been found desirable to give each of the active managers a share in the contingent profits, so that good management will be rewarded and bad management punished automatically and effectively. The stockholding method seems to be the most effective way to do this and hence most large enterprises, irrespective of other factors, find it wise to adopt the corporate form.

Interplay of Principles of Organization

In closing this discussion, one further consideration should always be borne in mind. The several factors above enumerated may operate together or they may be mutually opposed in pairs or in any other possible combination. Those engaged in the construction of business organizations should in all cases observe the interplay of these factors and finally choose that form giving the greatest surplus of forces operating in the line of prog-

ress. The situation bears a marked similarity to the operation of forces in the physical world. In the latter case, the direction and the intensity of each of the various forces can ordinarily be accurately measured and by the principle of the parallelogram of forces a solution of an otherwise impossible problem is easily found.

While the business organizer is at the present time unable to measure accurately the forces operating in business management and is thus prevented from employing the mathematical method of solution, it is undoubtedly true that progress is being made in estimating the relative strength of opposing forces in the business world and that the more accurate such estimates, the greater the chances of achieving business success. It is only by a careful study of the different types of business organization, in theory as well as in practice, that an approximation even of the relative advantages and disadvantages of each can be reached. It is even more important that the combined advantages and disadvantages relative to particular types of business enterprises should be analyzed and estimated, in order that the management may not be hampered by an organization that consumes an unnecessarily large portion of its strength and energy by friction generated by opposing forces wholly within itself. That organization is best which offers the least resistance to the operation of the motive forces employed in its active management.

TEST QUESTIONS

1. How can you illustrate the importance of the correct type of organization by analogy with the automobile?

2. What are the main tests that you would apply in determining the efficiency of an organization to a given situation?

3. On the point of facility of organization what advantages has the corporation over the partnership?

4. In what types of business enterprises is the corporation form especially favored by law?

5. What is the distinction between legal, natural, and industrial monopolies? What are some examples of each type?

6. What does the Sherman Anti-Trust Act provide regarding restraint of trade?

7. What was the earlier interpretation of that section by the Supreme Court of the United States?

8. What change in policy was made in the famous Standard Oil decision in 1911?

9. How has the Sherman Anti-Trust Act been modified by the Clayton Act?

10. What are the powers and duties of the Federal Trade Commission?

11. Why is a partnership not so well adapted to raising large amounts of capital as a corporation?

12. Why is the principle of limited liability so important in modern industrial organization?

13. What are the functions of the "risk-taking class"?

14. What are the two chief divisions of the risk-taking class? How are these subdivided?

15. In what sources of business organization is permanency of organization an especially important point to consider in choosing a type of organization?

16. In what ways do the different factors that enter into the comparative efficiency of types influence each other and thereby modify the situation?

FORM 1

Articles of Co-partnership

Agreement of co-partnership, entered into the ..... day of ....., 19.., by and between ....., of the city of ....., state of ....., and ....., of the city of ....., state of .....

First: The said parties mutually agree to become partners under the firm name of ....., in the business of .....
.....
.....
for a period of ..... years from date, their place of business to be located in .....

Second: To that end and purpose ..... has contributed .....
.....
and ..... has contributed .....
.....
to be used and employed in common between them for the support and management of the said business to their mutual benefit and advantage.

Third: Said parties agree with each other that each shall devote his whole time, attention, talents, and business capacity to the business of the firm.

Fourth: Neither of the partners shall become endorser or security in any manner for any other person unless the consent thereto of his co-partner shall have been first obtained in writing.

Fifth: There shall be kept at all times during the continuance of their co-partnership perfect, just, and true books of account which shall be accessible to both partners at all times.

SIXTH: The books shall be balanced on the first day of ..... in each year, and the profits and losses shall be shared equally between said partners.

SEVENTH: Each of the parties may draw from the cash of the firm the sum of ..... dollars a month, for his own use, the same to be charged on account, and neither of them shall take any further sum for his separate use without the consent of the other in writing; any further sum so taken shall draw interest at the rate of ..... per cent, and shall be payable, together with the interest due, within ..... days after notice in writing given by the other party.

EIGHTH: When the firm shall be dissolved all debts shall be paid; a true, just, and final account shall be made and the balance shall be divided equally between the partners.

Witnessed our hands and seals this ..... day of ....., 19..

(Signatures) .....

.....

(Signature of witness)

.....

FORM 2

NOTICE OF DISSOLUTION OF PARTNERSHIP

NOTICE is hereby given that the partnership lately existing between ..... and ....., of ....., under the firm name of ....., was dissolved on the ..... day of ....., by mutual consent (or expired on the ..... day of .....).

..... is authorized to settle all debts due to and by said firm.

(Signature of Partners) .....

.....

(Date)

.....

FORM 3

Notice of a Partner's Withdrawal

Notice is hereby given that ....., on the ..... day of ....., withdrew from the partnership existing between ..... and ....., under the firm name of .... All debts due to said partnership and those due by them have been assumed by the remaining partners, who will continue the business under the firm name of.....

(Signature of the Partners) .....

.....

(Date)

.....

FORM 4

General Contract to Form a Corporation[1]

This agreement made this first day of November, A. D., 1909, by and between the undersigned, John Brown, William Burbank, Edward Cunningham, and Raymond Williams, all of the city of Chicago and state of Illinois.

Witnesseth, That in consideration of the mutual undertakings and agreements of the parties hereto, as hereinafter set forth, and in further consideration of the sum of one dollar by each of the said parties to the other in hand paid (at the time of the execution hereof), the receipt of which is hereby severally acknowledged, the said parties to this contract hereby agree by and among themselves and with each other as follows, to wit:

First, that a corporation shall be formed by us under the laws of Illinois substantially as follows:

(a) The name thereof to be the Perfect Automobile Company.

(b) The capital stock of said corporation to be One Hundred Thousand ($100,000.00) Dollars, divided into one thousand (1,000) shares of One Hundred ($100.00) Dollars each, said stock to be all Common Stock of uniform character and usual form.

[1] From Frank's *Science of Organization and Business Development.*

(c) The purpose of said corporation to be substantially for the manufacture and sale of automobiles and their parts.

(d) Said corporation shall have a Board of Directors consisting of five in number, who shall all be stockholders of record at the time of their election.

(e) The officers of said corporation shall be a President, Vice-President, Secretary, Treasurer, and General Manager.

(f) The location of the principal office to be at Chicago.

(g) The duration of said corporation to be 99 years.

Second, we hereby agree with each other, and the one with the other, that we will take the number of shares of the capital stock of said corporation set opposite our respective names hereunto subscribed, and will pay to the commissioners duly appointed by the Secretary of State of Illinois in that behalf, fifty (50%) per cent of the par value of the said shares so subscribed by us respectively at the time of holding the first meeting of the said subscribers to elect a Board of Directors for said corporation; and we further agree to pay the balance of our said subscriptions whenever called upon so to do by the Board of Directors of said corporation, after the same shall be formed.

Third, we further nominate, constitute, and appoint ..... as our agent (or attorney), and the agent (or attorney) of the said corporation so to be formed, to create or cause to be created the said corporation in accordance with the laws of Illinois and this agreement, and to do and perform all things necessary to bring said corporation into legal existence; and we further authorize and empower our said agent (or attorney) to draw on the funds in the hands of the legally constituted officers or agents of said corporation, for the necessary expenses attending said incorporation, and we further agree that any and all contracts which our said agent (or attorney) may make in such matter shall be binding upon said corporation and also upon us jointly and severally.

In witness whereof, we, the undersigned, hereby severally bind ourselves, our heirs, executors, and administrators.

Names	Address	Shares	Amount

FORM 5

Promoter's Contract [2]

Whereas, The undersigned subscribers contemplate the organization of a corporation under the laws of the State (or territory) of ....., to be known by the name of ....., or by such other name as the subscribing stockholders therein may adopt, having an authorized capital stock of $....., divided into ..... shares of $..... each, for the purpose of (state object of corporation briefly).

It is hereby agreed by and between said subscribers and (promoter's name):

(1) That each of said subscribers will take the amount of stock in said corporation set opposite his name and pay for the same according to the terms of a subscription contract this day executed by them.

(2) That said (promoter's name) has heretofore done work and performed services of great value in preparing for the organization of said corporation and securing subscriptions for its capital stock, and is hereafter to perform additional services in perfecting its organization and securing bona fide subscriptions for the capital stock of said corporation aggregating (aside from the stock taken by the subscribers hereto) the sum of $....., or such part thereof as the subscribing stockholders may deem necessary to dispose of.

(3) Said (promoter's name) shall have ..... days in which to secure subscriptions for the aforesaid $..... of capital stock of said company, and if he has failed to do so at

[2] From *Modern Business Corporations*, by Wm. Allen Wood and L. B. Ewbank.

the end of that time the subscribers, at their option, may extend his authority or may recall it, and may, if they so elect, subscribe for the remaining portion of said $..... of capital stock which then remains unsubscribed for or induce others to take it or abandon the formation of said corporation.

(4) Upon the incorporation of said proposed company there shall be issued to said (promoter's name), or to any person designated by him, by indorsement on this agreement, in payment for his services in effecting such incorporation and securing the aforesaid subscriptions for the capital stock as above provided, ... shares of the capital stock of said corporation.

Provided, That if said (promoter's name) shall have failed to secure bona fide subscriptions for said capital stock in the full amount of $....., there shall be issued to him only such proportion of ..... shares of stock as the capital stock for which he has obtained subscriptions is of $....., the whole amount for which he hereby undertakes to solicit subscriptions.

Provided, further, That if said company be incorporated before the time allowed said (promoter's name) for obtaining subscriptions has expired and said (promoter's name) shall thereafter, under the terms of this contract secure additional bona fide subscriptions for the capital stock of said company, as above provided, shares of stock shall be issued within thirty days after the said time allowed for obtaining subscriptions has expired to (promoter's name), or to his assignee, as above provided, in the proportion of one share of stock for each $..... of capital stock for which subscriptions are so secured by him.

In Witness Whereof, the said subscribers have hereunto attached their names and designated the number of shares taken by each of them, and said (promoter's name) has agreed to the above terms.

	Shares
.....	.....
.....	.....
.....	.....

I agree to the above terms.

(Signed by promoter)

FORM 6

Underwriting Agreement

THE UNITED STATES SHIPBUILDING COMPANY

A corporation to be organized under the laws of the state of New Jersey, either by that or some similar name, proposes to acquire the plants and equipment of the following concerns, or their capital stock, free from any liens:

The Union Iron Works, San Francisco, California.

The Bath Iron Works, Limited, and The Hyde Windlass Company, Bath, Maine.

The Crescent Shipyard and The Samuel L. Moore & Sons Co., Elizabethport, New Jersey.

The Eastern Shipbuilding Company, New London, Connecticut.

The Harlan & Hollingsworth Co., Wilmington, Delaware.

The Canda Manufacturing Company, Carteret, New Jersey.

UNDERWRITING AGREEMENT

For $9,000,000 Series A First Mortgage, Five Per Cent Sinking Fund, Gold Bonds, due 1932, part of an authorized issue of $16,000,000 bonds of $1,000 each, $5,500,000 being withdrawn from public issue for disposal under the vendor's and subscribers' contracts, and $1,500,000 being reserved in the treasury of the company. Additional bonds may be issued only for the purpose of acquiring additional plants and equipment and for improvements and betterments, upon such terms and conditions as shall be approved by the holders of a majority of the bonds under the present issue outstanding at the time of such approval.

We, the undersigned, each for himself, with The Mercantile Trust Company, for itself and for the United States Shipbuilding Company, and to and with each other, agree to subscribe for, receive, and pay for the amount of 5 per cent first mortgage, sinking fund, gold bonds of the United States Shipbuilding Company

of one thousand dollars each, set opposite our respective signatures hereto, at the price of $900 for each bond, 25 per cent to be paid upon allotment and the balance upon the demand of The Mercantile Trust Company.

We further agree to receive and pay for any smaller amount than that subscribed for which may be allotted to us respectively.

The conditions of this underwriting agreement are as follows:

(1) That this agreement shall not be binding upon the undersigned unless the entire amount of $9,000,000 of bonds shall have been underwritten.

(2) That within such reasonable time as shall be fixed by The Mercantile Trust Company the said $9,000,000 of bonds, less any amount withdrawn by the underwriters, as hereinafter set forth, will be offered to the public, through such banker or bankers or brokers as shall be designated by The Mercantile Trust Company, for subscription at not less than 95 per cent.

(3) With the consent of The Mercantile Trust Company, any other concern may be included in this combination, or others substituted therefor, provided the working efficiency or values are not lessened or impaired.

(4) That if the amount of bonds subscribed and paid for upon such public issues be at least equal to the amount of bonds so offered to the public, then all liability under this agreement shall cease.

(5) That in case the amount of bonds subscribed for upon such public offering shall be less than the total amount of bonds so offered to the public, or in case the bonds subscribed for upon such public issue shall not be paid for to an amount equal, at the rate of 95 per cent, to the total of such public offering, then such deficiency in subscriptions and payments will, upon the demand of The Mercantile Trust Company, be made good by the subscribers hereto in the manner aforesaid, pro rata in the proportion their subscriptions for bonds not withdrawn by them from public issue bear to the total amount of bonds so offered to the public.

(6) That each underwriter shall receive in preferred and common stock of the United States Shipbuilding Company 25 per

cent of the par value of the bonds hereby underwritten in each kind of stock, and also that all the proceeds, not to exceed 5 per cent, realized from the sale of the bonds at public issue in excess of 90 per cent, after deducting issue expenses, shall belong to the underwriters.

(7) That any underwriter shall have the option of withdrawing from the public issue any of the bonds hereby underwritten by him, provided that he notify The Mercantile Trust Company, five days prior to the date fixed for the public issue, that he elects to purchase said bonds, provided that, in the proportion of the bonds so purchased, he waives his said right to participate in the cash proceeds realized from the public issue.

(8) That no underwriter shall sell or offer for sale the bonds so purchased, nor any of the bonus shares he receives, until twelve months after the date of payment, without the consent of The Mercantile Trust Company.

New York, April 19, 1902.

Name	Address	Bonds Underwritten
.....	.....	.....
.....	.....	.....
.....	.....	.....

FORM 7

Certificate of Incorporation

CERTIFICATE OF INCORPORATION OF THE MARSTON MANUFACTURING COMPANY [3]

We, the undersigned, all being of full age and two-thirds being citizens of the United States, and one of us a resident of the state of New York for the purpose of forming a Corporation under the Business Corporations Law of the state of New York, do hereby certify and set forth:

First, The name of said Corporation shall be
"Marston Manufacturing Company."

[3] From Conyngton's *Manual of Corporate Management.*

Second, The purposes for which said Corporation is formed are as follows:

1. To buy, sell, manufacture, and generally deal in all manner of tools, machinery, devices, appliances, and supplies used in the cooper's trade.

2. To lease, buy, sell, use, and hold all such property, real or personal, as may be necessary or convenient in connection with the said business.

3. To do any or all things set forth in this certificate as objects, purposes, powers, or otherwise, to the same extent and as fully as natural persons might do, and in any part of the world.

Third, The amount of Capital Stock of said Corporation shall be Fifty Thousand ($50,000) Dollars.

Fourth, The number of shares composing said capital stock shall be Five Hundred (500) Shares of the par value of One Hundred ($100) Dollars each, and the amount of capital with which said Corporation will begin business is Five Hundred ($500) Dollars.

Fifth, The principal business office of said Corporation shall be in the Borough of Manhattan, in the City, County, and State of New York.

Sixth, The duration of said Corporation shall be perpetual.

Seventh, The number of directors of said Corporation shall be three.

Eighth, The names and post-office addresses of the directors of said Corporation for the first year are as follows:

Names	Addresses
Morris P. Marston	No. 165 Grand Ave., Brooklyn, N. Y.
John Adams	No. 30 Broad St., New York City
Henry Cornell	Little Falls, New Jersey.

Ninth, The names and post-office addresses of the subscribers to this certificate, and the number of shares of stock which each agrees to take in said Corporation, are as follows:

Names	Addresses	Shares
Morris P. Marston	No. 165 Grand Ave., Brooklyn, N. Y.	25
John Adams	No. 30 Broad St., New York City	10
Henry Cornell	Little Falls, New Jersey	10
William B. Ames	Singac, New Jersey	5

Tenth, Pursuant to Section 40 of the Stock Corporation Law, as amended, this Corporation shall have power to purchase, acquire, hold and dispose of the stocks, bonds, and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations.

In Witness Whereof, we have made and signed this certificate in duplicate this fourteenth day of January, one thousand nine hundred and three.

State of New York } ss.:
County of New York }

Morris P. Marston
John Adams
Henry Cornell
William B. Ames

Personally appeared before me this 14th day of January, 1903, Morris P. Marston, John Adams, Henry Cornell and William B. Ames, to me personally known to be the persons described in and who executed the foregoing certificate, and severally acknowledged that they executed the same for the purposes therein set forth.

Seth Lawson,
(Notarial Seal) Notary Public for New York County.

FORM 8

Charter of the United States Steel Corporation

Certificate of Amendment of Original Certificate of Incorporation

United States Steel Corporation, a corporation of the State of New Jersey, and the President and the Secretary of said Company, do hereby certify as follows:

1. (Here follows the location of the principal office in New Jersey, and the name of the agent therein and in charge thereof.)

2. The total authorized capital stock of said corporation, as set forth in its original certificate of incorporation, is $3,000, divided into 30 shares of the par value of $100 each, of which 15 shares of the aggregate par value of $1,500 are to be preferred stock, and 15 shares of the aggregate par value of $1,500 are to be

common stock. Such total authorized capital stock, consisting of 15 shares of the preferred stock and 15 shares of the common stock, of the aggregate par value of $3,000, was subscribed for by the incorporators as set forth in the said original certificate of incorporation.

3. The Board of Directors of said corporation, at a meeting of said Board duly held, passed a resolution declaring that the changes and amendments hereinafter set forth are advisable, and calling a meeting of the stockholders to take action thereon.

4. Such meeting of the stockholders was thereupon duly held pursuant to such call of the Board of Directors, upon notice given to each stockholder as provided in the by-laws. At said meeting all of the incorporators and stockholders of said corporation were personally present, and more than two-thirds in interest of each class of the stockholders having voting powers—namely, all of the incorporators and all of the stockholders of said corporation —voted in favor of such changes and amendments, which were accordingly adopted. Such changes and amendments are as follows:

A. That Article IV of the Certificate of Incorporation of said company be amended so as to read as follows:

IV. The total authorized capital stock of the corporation is eleven hundred million dollars ($1,100,000,000), divided into eleven million shares of the par value of one hundred dollars each. Of such total authorized capital stock, five million five hundred thousand shares, amounting to five hundred and fifty million dollars, shall be preferred stock, and five million five hundred thousand shares, amounting to five hundred and fifty million dollars, shall be common stock.

From time to time the preferred stock and the common stock may be increased according to law, and may be issued in such amounts and proportions as shall be determined by the Board of Directors and as may be permitted by law.

The holders of the preferred stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation yearly dividends at the rate of seven per centum per annum, and no more, payable quarterly on dates to be fixed by

the by-laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart; so that if in any year dividends amounting to seven per cent shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock.

Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared, and shall have become payable, and the accrued quarterly installments for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years and such accrued quarterly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

And that the capital stock of said Company be increased accordingly to $1,100,000,000, divided into 11,000,000 shares of the par value of $100 each, of which amount 5,500,000 shares amounting to $550,000,000 shall be preferred stock, with the rights and preferences aforesaid, and 5,500,000 shares amounting to $550,000,000 shall be common stock.

B. That the fifth paragraph of Article VII of the said certificate of incorporation be amended so as to read as follows:

Unless authorized by votes given in person or by proxy by stockholders holding at least two-thirds of the capital stock of the corporation, which is represented and voted upon in person

or by proxy at a meeting specially called for that purpose, or at an annual meeting, the Board of Directors shall not mortgage or pledge any of its real property, or any shares of the capital stock of any other corporation; but this prohibition shall not be construed to apply to the execution of any purchase-money mortgage or any other purchase-money lien.

As authorized by the Act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the seventeenth section of the Act Concerning Corporations (Revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock, at any meeting after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

C. That the certificate of incorporation of said United States Steel Corporation, as amended, shall read as follows:

AMENDED

Certificate of Incorporation
of
United States Steel Corporation

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the Act of the Legislature of the State of New Jersey, entitled "An Act concerning Corporations (Revision of 1896)," and the acts amendatory thereof and supplemental thereto, do hereby certify as follows:

I. The name of the Corporation is

"United States Steel Corporation."

II. (Here follows the location of the principal office in New Jersey, and the name of the agent therein and in charge thereof.)

III. The objects for which the corporation is formed are:

To manufacture iron, steel, manganese, coke, copper, lumber and other materials, and all or any articles consisting, or partly

consisting, of iron, steel, copper, wood or other materials, and all or any products thereof.

To acquire, own, lease, occupy, use or develop any lands containing coal or iron, manganese, stone or other ores, or oil, and any wood lands, or other lands for any purpose of the company.

To mine or otherwise to extract or remove, coal, ores, stone and other minerals and timber from any lands owned, acquired, leased or occupied by the Company, or from any other lands.

To buy and sell, or otherwise to deal or to traffic in iron, steel, manganese, copper, stone, ores, coal, coke, wood, lumber and other materials, and any of the products thereof, and any articles consisting or partly consisting thereof.

To construct bridges, buildings, machinery, ships, boats, engines, cars and other equipment, railroads, docks, ships, elevators, water works, gas works, and electric works, viaducts, aqueducts, canals and other waterways, and any other means of transportation, and to sell the same, or otherwise to dispose thereof, or to maintain and operate the same, except that the Company shall not maintain or operate any railroad or canal in the State of New Jersey.

To apply for, obtain, register, purchase, lease or otherwise to acquire, and to hold, use, own, operate and introduce, and to sell, assign or otherwise to dispose of, any trade-marks, trade-names, patents, inventions, improvements and processes used in connection with or secured under letters patent of the United States, or elsewhere or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise to turn to account any such trade-marks, patents, licenses, processes and the like, or any such property or rights.

To engage in any other manufacturing, mining, construction or transportation business of any kind or character whatsoever, and to that end to acquire, hold, own and dispose of any and all property, assets, stocks, bonds and rights of any and every kind, but not to engage in any business hereunder which shall require the exercise of the right of eminent domain within the State of New Jersey.

To acquire by purchase, subscription or otherwise, and to hold

or to dispose of stocks, bonds or any other obligations of any corporation formed for, or then or theretofore engaged in or pursuing, any one or more of the kinds of business, purposes, objects or operations above indicated, or owning or holding any property of any kind herein mentioned, or of any corporation owning or holding the stocks or the obligations of any such corporation.

To hold for investment, or otherwise to use, sell or dispose of, any stock, bonds or other obligations of any such other corporation; to aid in any manner any corporation whose stock, bonds or other obligations are held or in any manner guaranteed by the Company, and to do any other acts or things for the preservation, protection, improvement or enhancement of the value of any such stock, bonds or other obligations, or to do any acts or things designed for any such purpose; and, while owner of any such stock, bonds or other obligations, to exercise all the rights, powers and privileges of ownership thereof, and to exercise any and all voting power thereon.

The business or purpose of the Company is from time to time to do any one or more of the acts and things herein set forth; and it may conduct its business in other States, and in the Territories, and in foreign countries, and may have one office, or more than one office, and keep the books of the Company outside of the State of New Jersey, except as otherwise may be provided by law; and may hold, purchase, mortgage and convey real and personal property, either in or out of the State of New Jersey.

Without in any particular limiting any of the objects and powers of the corporation, it is hereby expressly declared and provided that the corporation shall have power to issue bonds and other obligations in payment for property purchased or acquired by it, or for any other object in or about its business; to mortgage or pledge any stocks, bonds or other obligations, or any property which may be acquired by it, to secure any bonds or other obligations by it issued or incurred; to guarantee any dividends, or bonds, or contracts, or other obligations; to make and perform contracts of any kind and description and in carrying on its business. or for the purpose of attaining or furthering

any of its objects, to do any and all other acts and things, and to exercise any and all other powers which a copartnership or natural person could do and exercise, and which now or hereafter may be authorized by law.

IV. The total authorized capital stock of the corporation is eleven hundred million dollars ($1,100,000,000), divided into eleven million shares of the par value of one hundred dollars each. Of such total authorized capital stock, five million five hundred thousand shares, amounting to five hundred and fifty million dollars, shall be preferred stock, and five million five hundred thousand shares, amounting to five hundred and fifty million dollars, shall be common stock.

From time to time, the preferred stock and the common stock may be increased according to law, and may be issued in such amounts and proportions as shall be determined by the Board of Directors, and as may be permitted by law.

The holders of the preferred stock shall be entitled to receive when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of seven per centum per annum, and no more, payable quarterly on dates to be fixed by the by-laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart; so that, if in any year dividends amounting to seven per cent shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock.

Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly installments for the current year shall have been declared, and the Company shall have paid such cumulative dividends for previous years and such accrued quarterly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits.

In the event of any liquidation or dissolution or winding up

(whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value, and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

V. The names and post-office addresses of the incorporators, and the number of shares of stock for which severally and respectively we do hereby subscribe (the aggregate of our said subscriptions being three thousand dollars, is the amount of capital stock with which the corporation will commence business), are as follows:

(Here follow the names and post-office addresses of each of the incorporators, and the number of shares of stock subscribed for by each.)

VI. The duration of the corporation shall be perpetual.

VII. The number of Directors of the Company shall be fixed from time to time by the by-laws; but the number, if fixed at more than three, shall be some multiple of three. The Directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the Board of Directors. The Directors of the first class shall be elected for a term of one year; the Directors of the second class for a term of two years; and the Directors of the third class for a term of three years; and at each annual election the successors to the class of Directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of Directors shall expire in each year.

The number of the Directors may be increased as may be provided in the by-laws. In case of any increase of the number of the Directors the additional Directors shall be elected as may be provided in the by-laws by the Directors or by the Stockholders at an annual or special meeting; and one-third of their number

shall be elected for the then unexpired portion of the term of the Directors of the first class, one-third of their number for the unexpired portion of the term of the Directors of the second class, and one-third of their number for the unexpired portion of the term of the Directors of the third class, so that each class of Directors shall be increased equally.

In case of any vacancy in any class of Directors through death, resignation, disqualification or other cause, the remaining Directors, by affirmative vote of a majority of the Board of Directors, may elect a successor to hold office for the unexpired portion of the term of the Director whose place shall be vacant, and until the election of a successor.

The Board of Directors shall have power to hold their meetings outside of the State of New Jersey at such places as from time to time may be designated by the by-laws or by resolution of the Board. The by-laws may prescribe the number of Directors necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number of the Directors.

Unless authorized by votes given in person or by proxy by Stockholders holding at least two-thirds of the capital stock of the corporation, which is represented and voted upon in person or by proxy at a meeting specially called for that purpose, or at an annual meeting, the Board of Directors shall not mortgage or pledge any of its real property, or any shares of the capital stock of any other corporation; but this prohibition shall not be construed to apply to the execution of any purchase-money mortgage or any other purchase-money lien.

As authorized by the Act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the seventeenth section of the Act concerning Corporations (Revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting, after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole Board of Directors.

Any other officer or employe of the Company may be removed at any time by vote of the Board of Directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by vote of the Board of Directors.

The Board of Directors, by the affirmative vote of a majority of the whole board, may appoint from the Directors an executive committee, of which a majority shall constitute a quorum; and, to such extent as shall be provided in the by-laws, such committee shall have and may exercise all or any of the powers of the Board of Directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The Board of Directors, by the affirmative vote of a majority of the whole board, may appoint any other Standing Committees, and such Standing Committees shall have and may exercise such powers as shall be conferred or authorized by the by-laws.

The Board of Directors may appoint not only other officers of the Company, but also one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers of the president, of the treasurer and of the secretary respectively.

The Board of Directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the Company; and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the Board of Directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of its own capital stock, to such extent and in such manner and upon such terms as the Board of Directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the Company's capital stock as provided by law.

The Board of Directors from time to time shall determine

whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by Statute or authorized by the Board of Directors or by a resolution of the stockholders.

Subject always to by-laws made by the Stockholders, the Board of Directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the Board of Directors may be altered or repealed by the Stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

In Witness Whereof, we have hereunto set our hands and seals the 23d day of February, 1901.

(Signatures of Incorporators)

(Acknowledgment)

5. The written assent and signatures of all the Incorporators and Stockholders of said United States Steel Corporation to the foregoing amendments and changes is hereto appended.

In Witness Whereof, the said United States Steel Corporation has caused this certificate to be signed by its President, and its Secretary, and its corporate seal to be hereto affixed, this 1st day of April, 1901.

(Signatures of President and Secretary, and Corporate Seal)

(Acknowledgment)

We, the undersigned, being all the Incorporators and Stockholders of the United States Steel Corporation, having, at a meeting regularly called for that purpose, voted in favor of the changes and amendments set forth in the above certificate, do now, pursuant to law, hereby give our written consent to the said changes and alterations.

Witness our hands this 1st day of April, A. D. 1901.

(Here follow signatures of Incorporators and Stockholders)

(Acknowledgment)

FORM 9

Object Clauses

The purpose for which a corporation is formed is perhaps the most important part of the certificate of incorporation. The objects and purposes of the corporation should be stated in the fullest and clearest manner possible, because the company cannot undertake any business not authorized by its charter. No action by the board of directors can make an illegal exercise of power valid. It is not sufficient to insert such general words as "in general, to carry on any other business, whether manufacturing or otherwise." The courts will limit such words to operations of a nature similar to the business previously mentioned and will not include any wholly new business. The addition of general words of this character after a specific enumeration of powers does not add to the enumerated powers of a corporation.

In view of this fact the following object clauses will aid greatly in defining the objects and purposes of a corporation. One should always note whether these objects are authorized under the statutes of the state in which one is incorporating.

DEPARTMENT STORE [4]

To buy, lease, construct, or otherwise acquire storerooms, warehouses, and other buildings; to buy and sell all kinds of merchandise; to equip, conduct, and operate a general department store; to establish therein stores for the purchase and sale of dry goods, millinery, cloth, and fabrics, gents' furnishing goods, women's clothing, men's and boys' clothing, hats, boots and shoes, furniture, carpets and draperies, drugs and chemicals, hardware, china and glassware, silver, jewelry, pictures, books, stationery, photographs and photographers' supplies, perfumery, toilet ar-

[4] Wood, *Modern Business Corporations.*

ticles, and bicycles. (Enumeration made to cover any classes of business desired.)

AUTOMOBILES

To purchase, lease, and acquire lands and buildings for use as manufactories, warehouses, and offices; to manufacture, buy, sell, import, and export vehicles of all kinds propelled by mechanical power; engines and appliances for the generation and use of steam, electricity, gasoline, or other form of power for propelling carriages, wagons, trucks, cars, and vehicles of every kind and description; all parts and portions of such vehicles, engines, and machinery, and all things incident to or used in connection with the same.

AGRICULTURAL IMPLEMENTS

To purchase, lease, or otherwise acquire lands and buildings for the erection and operation of factories, workshops, and warehouses with suitable equipment for manufacturing and selling agricultural implements; to manufacture, buy, sell, import, export, and deal in agricultural implements and machinery of all kinds, including implements for stirring, pulverizing, and preparing the soil, planting, harvesting, conveying, and threshing crops, and for otherwise conducting the operations of agriculture.

CHEMICAL COMPANY

To buy, lease, erect, and acquire, hold, own, and manage real estate and buildings for manufactories and warehouses; to manufacture, buy, sell, import, export, and deal in chemicals and drugs of all kinds; to analyze and refine all kinds of chemicals, drugs, and preparations thereof; to conduct the business of manufacturers and dealers in chemicals, drugs, medicines, compounds, druggists' sundries, chemical, surgical, and scientific apparatus and machinery; to invent, devise, purchase, acquire, and use secret processes, and processes protected by patents and trade-marks; and to apply for, register, purchase, and procure patents and trade-marks, granting exclusive rights to make, vend, sell,

and use compounds, preparations, medicines, drugs, and chemical compositions.

APARTMENT HOUSES

To purchase, lease, or otherwise acquire real estate necessary to the operations of the company; to buy, lease, build, erect, equip, operate, maintain, and sell apartment houses and residence hotels; to purchase, lease, install, and operate furnaces, boilers, and machinery; to supply heat, steam, water, electricity, and other means for heating, lighting, power, signalling, and other purposes; to construct, install, lease, own, and operate telephone exchanges in buildings owned or operated.

CONTRACTORS AND BUILDERS

To build, repair, remodel, construct, and equip houses, buildings, roads, streets, sidewalks, pavements, sewers, tunnels, subways, ditches, conduits, reservoirs, railways, systems of waterworks, manufactories, and all structures of wood, stone, brick, cement, iron, steel, or other building material.

HOTEL COMPANY

To purchase, lease, acquire, own, and occupy lands and buildings; to erect, construct, equip, operate, manage, and maintain houses and buildings for hotels, apartment houses, dwellings, offices, and business structures for the accommodation of the public and of individuals; to lease, rent, and let the same to tenants and guests; to manufacture, furnish, and sell to tenants and occupants of such buildings, heat, light, steam, water, electricity, and power; to equip, furnish, keep, manage, and operate restaurants, cafes, bars, lunch rooms, tea rooms, billiard halls, and barber shops for the accommodation of the public and of individuals.

FORM 10

By-laws of the United States Steel Corporation

As on March 1, 1910

ARTICLE I.—STOCKHOLDERS

Section 1. *Annual Meeting.* The annual meeting of the stockholders of the Company shall be held annually at the principal

office of the Company in the State of New Jersey, at twelve o'clock noon, on the third Monday in April in each year, if not a legal holiday, and if a legal holiday then on the next succeeding Monday not a legal holiday, for the purpose of electing directors, and for the transaction of such other business as may be brought before the meeting; and the terms of office of the directors of the several classes shall continue until the election of their successors at such meeting as provided in Article II hereof.

It shall be the duty of the Secretary to cause notice of each annual meeting to be published once in each of the four calendar weeks next preceding the meeting in at least one newspaper in each of the following places: Jersey City, N. J., New York, N. Y., Chicago, Ill., and Pittsburg, Pa. Nevertheless, a failure to publish such notice, or any irregularity in such notice, or in the publication thereof, shall not affect the validity of any annual meeting, or of any proceedings at any such meeting.

Section 2. *Special Meetings.* Special meetings of the stockholders may be held at the principal office of the Company in the State of New Jersey, whenever called in writing, or by vote, by a majority of the Board of Directors.

Notice of each special meeting, indicating briefly the object or objects thereof, shall by the secretary be published once in each of the four calendar weeks next preceding the meeting, in at least one newspaper in each of the following places: Jersey City, N. J., New York, N. Y., Chicago, Ill., and Pittsburg, Pa. Nevertheless, if all the stockholders shall waive notice of a special meeting, no notice of such meeting shall be required; and whenever all the stockholders shall meet in person or by proxy, such meeting shall be valid for all purposes without call or notice, and at such meeting any corporate action may be taken.

Section 3. *Quorum.* At any meeting of the stockholders the holders of one-third of all of the shares of the capital stock of the Company, present in person or represented by proxy, shall constitute a quorum of the stockholders for all purposes, unless the representation of a larger number shall be required by law, and, in that case, the representation of the number so required, shall constitute a quorum.

If the holders of the amount of stock necessary to constitute a quorum shall fail to attend in person or by proxy at the time and place fixed by these by-laws for an annual meeting, or fixed by notice as above provided for a special meeting called by the directors, a majority in interest of the stockholders present in person or by proxy may adjourn, from time to time, without notice other than by announcement at the meeting, until holders of the amount of stock requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

Section 4. *Organization.* The chairman of the Board, and in his absence, the chairman of the Finance Committee, and in the absence of both, the president, shall call meetings of the stockholders to order, and shall act as chairman of such meetings. The Board of Directors or Finance Committee may appoint any stockholder to act as chairman of any meeting in the absence of the chairman of the Board and of the chairman of the Finance Committee and of the president.

The secretary of the Company shall act as secretary at all meetings of the stockholders; but in the absence of the secretary at any meeting of the stockholders the presiding officer may appoint any person to act as secretary of the meeting.

Section 5. *Voting.* At each meeting of the stockholders, every stockholder shall be entitled to vote in person, or by proxy appointed by instrument in writing, subscribed by such stockholder or by his duly authorized attorney, and delivered to the inspectors at the meeting; and he shall have one vote for each share of stock standing registered in his name at the time of the closing of the transfer books for said meeting. The votes for directors, and, upon demand of any stockholder, the votes upon any question before the meeting, shall be by ballot.

At each meeting of the stockholders, a full, true and complete list, in alphabetical order, of all of the stockholders entitled to vote at such meeting, and indicating the number of shares held by each, certified by the secretary or by the treasurer, shall be furnished. Only the persons in whose names shares of stock stand

on the books of the Company at the time of the closing of the transfer books for such meeting, as evidenced by the list of stockholders so furnished, shall be entitled to vote in person or by proxy on the shares so standing in their names.

Prior to any meeting, but subsequent to the time of closing the transfer books for such meeting, any proxy may submit his powers of attorney to the secretary, or to the treasurer, for examination. The certificate of the secretary, or of the treasurer, as to the regularity of such powers of attorney, and as to the number of shares held by the persons who severally and respectively executed such powers of attorney, shall be received as prima facie evidence of the number of shares represented by the holder of such powers of attorney for the purpose of establishing the presence of a quorum at such meeting and of organizing the same, and for all other purposes.

Section 6. *Inspectors.* At each meeting of the stockholders, the polls shall be opened and closed, the proxies and ballots shall be received and be taken in charge, and all questions touching the qualification of voters and the validity of proxies and the acceptance or rejection of votes, shall be decided by three inspectors. Such inspectors shall be appointed by the Board of Directors before or at the meeting, or, if no such appointment shall have been made, then by the presiding officer at the meeting. If for any reason any of the inspectors previously appointed shall fail to attend or refuse or be unable to serve, inspectors in place of any so failing to attend or refusing or unable to attend, shall be appointed in like manner.

ARTICLE II.—BOARD OF DIRECTORS

Section 1. *Number, Classification and Term of Office.* The business and the property of the Company shall be managed and controlled by the Board of Directors.

As provided in the certificate of incorporation, the directors shall be classified in respect of the time for which they shall severally hold office, by dividing them into three classes, each class consisting of one-third of the whole number of the Board of Directors. The directors of the first class shall be elected for a

term of one year; the directors of the second class shall be elected for a term of two years; and the directors of the third class shall be elected for a term of three years. At each annual election, the successors to the directors of the class whose term shall expire in that year, shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

The number of directors shall be twenty-four; but the number of directors may be altered from time to time by the alteration of these by-laws.

In case of any increase of the number of directors, the additional directors shall be elected by the directors then in office; one-third of such additional directors for the unexpired portion of the term of one year; one-third for the unexpired portion of the term of two years; and one-third for the unexpired portion of the term of three years, so that each class of directors shall be increased equally.

Every director shall be a holder of at least one share of the capital stock of the Company. Each director shall serve for the term for which he shall have been elected, and until his successor shall have been duly chosen.

At all elections of the directors, the polls shall remain open for at least one hour, unless every registered owner of shares has sooner voted in person or by proxy, or in writing has waived the statutory provision.

Section 2. *Vacancies.* In case of any vacancy in the directors of any class through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority thereof, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of his successor.

Such vacancy shall be filled upon and after nominations therefor shall have been made by the Finance Committee.

Section 3. *Place of Meeting, etc.* The directors may hold their meetings, and may have an office and keep the books of the Company (except as otherwise may be provided for by law) in such place or places in the State of New Jersey or outside of the

State of New Jersey, as the Board from time to time may determine.

Section 4. *Regular Meetings.* Regular meetings of the Board of Directors shall be held monthly on the last Tuesday of each month, if not a legal holiday, and if a legal holiday, then on the next succeeding Tuesday not a legal holiday. No notice shall be required for any such regular monthly meeting of the Board.

Section 5. *Special Meetings.* Special meetings of the Board of Directors shall be held whenever called by direction of the chairman of the Board, or the chairman of the Finance Committee, or the president, or of one-third of the directors for the time being in office.

The secretary shall give notice of each special meeting by mailing the same at least two days before the meeting, or by telegraphing the same at least one day before the meeting, to each director; but such notice may be waived by any director. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting. At any meeting at which every director shall be present, even though without any notice, any business may be transacted.

Section 6. *Quorum.* Ten Directors shall constitute a quorum for the transaction of business; but if at any meeting of the Board there be less than a quorum present, a majority of those present may adjourn the meeting from time to time.

The affirmative vote of at least one-third of all the directors for the time being in office shall be necessary for the passage of any resolution.

Section 7. *Order of Business.* At meetings of the Board of Directors business shall be transacted in such order as, from time to time, the Board may determine by resolution.

At all meetings of the Board of Directors, the chairman of the Board, or in his absence the chairman of the Finance Committee, or, in the absence of both of these officers, the President shall preside.

Section 8. *Contracts.* Inasmuch as the directors of this Company are men of large and diversified business interests, and are likely to be connected with other corporations with which from

time to time this Company must have business dealings, no contract or other transaction between this Company and any other corporation shall be affected by the fact that directors of this Company are interested in, or are directors or officers of, such other corporation, if, at the meeting of the Board, or of the committee of this Company, making, authorizing or confirming such contract or transaction, there shall be present a quorum of directors not so interested; and any director individually may be a party to, or may be interested in, any contract or transaction of this Company, provided that such contract or transaction shall be approved or be ratified by the affirmative vote of at least ten directors not so interested.

The Board of Directors in its discretion may submit any contract or act for approval or ratification at any annual meeting of the stockholders, or at any meeting of the stockholders called for the purpose of considering any such act or contract; and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the capital stock of the Company which is represented in person or by proxy at such meeting (provided that a lawful quorum of stockholders be there represented in person or by proxy) shall be as valid and as binding upon the corporation and upon all the stockholders as though it had been approved or ratified by every stockholder of the corporation.

Section 9. *Compensation of Directors.* For his attendance at any meeting of the Board of Directors, or of any committee, every director shall receive an allowance of twenty dollars for attendance at each meeting.

Section 10. *Election of Officers and Committees.* At the first regular meeting of the Board of Directors in each year (at which a quorum shall be present) held next after the annual meeting, the Board of Directors shall proceed to the election of the executive officers of the Company, and of the Finance Committee to be elected by the Board of Directors under the provisions of Article III and Article IV of the By-Laws.

ARTICLE III.—FINANCE COMMITTEE

Section 1. The Board of Directors shall elect from the directors a *Finance Committee,* and shall designate for such committee a chairman, who shall continue to be chairman of the committee during the pleasure of the Board of Directors.

The Board of Directors shall fill vacancies in the Finance Committee by election from the directors; and at all times it shall be the duty of the Board of Directors to keep the membership of such committee full, with due regard to the qualifications for such membership indicated in this Article of the By-Laws.

All action by the Finance Committee shall be reported to the Board of Directors at its meeting next succeeding such action, and shall be subject to revision or alteration by the Board of Directors; *provided,* that no rights or acts of third parties shall be affected by any such revision or alteration.

The Finance Committee shall fix its own rules of proceeding, and shall meet where and as provided by such rules, or by resolution of the Board of Directors, but in every case the presence of at least four members shall be necessary to constitute a quorum.

In every case the affirmative vote of a majority of all of the members of the committee present at the meeting, shall be necessary to its adoption of any resolution.

Section 2. *The Finance Committee* shall consist of seven members, besides the chairman of the Board and the president, each of whom, by virtue of his office, shall be a member of the Finance Committee. So far as practicable each of the seven elected members of the Finance Committee shall be a person of experience in matters of finance. Unless otherwise ordered by the Board of Directors, each elected member of the Finance Committee shall continue to be a member thereof until the expiration of his term of office as a director.

The Finance Committee shall have special charge and control of all financial affairs of the Company. The president, the vice-presidents, the general counsel, the treasurer, the comptroller and the secretary, and their respective offices shall be under the direct control and supervision of the Finance Committee, and of its chairman when the Committee is not in session.

During the intervals between the meetings of the Board of Directors, the Finance Committee shall possess, and may exercise, all the powers of the Board of Directors, in the management of all the affairs of the Company, including its purchases of property, and the execution of legal instruments with or without the corporate seal in such manner as said committee shall deem to be best for the interests of the Company, in all cases in which specific directions shall not have been given by the Board of Directors.

During the intervals between the meetings of the Finance Committee, and subject to its review, the chairman of the Board and the chairman of the Finance Committee together, shall possess, and may exercise any of the powers of the committee, except as from time to time shall be otherwise provided by resolution of the Board of Directors.

Except as otherwise provided by the By-Laws, or by resolution of the Board of Directors, all salaries and compensations paid or payable by the Company shall be fixed by the Finance Committee.

No director not an executive officer shall become a salaried employe of the Company except by special vote of the Finance Committee.

ARTICLE IV.—OFFICERS

Section 1. *Officers.* The executive officers of the Company shall be a chairman of the Board of Directors, a chairman of the Finance Committee, a president, a vice-president, or more than one vice-president, a general counsel, a treasurer, a secretary and a comptroller, all of whom shall be elected by the Board of Directors.

The Board of Directors may appoint such other officers as they shall deem necessary, who shall have such authority and shall perform such duties as from time to time may be prescribed by the Board of Directors.

One person may hold more than one office.

In its discretion, the Board of Directors by a vote of a majority thereof may leave unfilled for any such period as it may fix by resolution, any office except those of president, treasurer, secretary and comptroller.

All officers and agents shall be subject to removal at any time by the affirmative vote of a majority of the whole Board of Directors. All officers, agents and employes, other than officers appointed by the Board of Directors, shall hold office at the discretion of the committee or of the officer appointing them.

Each of the salaried officers of the corporation shall devote his entire time, skill and energy to the business of the corporation, unless the contrary is expressly consented to by the Board of Directors or the Finance Committee. No vacation shall be taken by any of such officers except by consent of the Board of Directors or the Finance Committee.

The Finance Committee shall have power to remove all officers, agents and employes of the Company, except officers elected or appointed by the Board of Directors.

Section 2. *Powers and Duties of the Chairman of the Board.* The chairman of the Board of Directors shall be the chief executive officer of the corporation and, subject to the Board of Directors and Finance Committee, shall be in general charge of the affairs of the corporation. He shall preside at all meetings of the stockholders and of the Board of Directors; and by virtue of his office shall be a member of the Finance Committee.

Section 3. *Powers and Duties of the President.* In the absence of the Chairman of the Board and the Chairman of the Finance Committee, the president shall preside at all meetings of the stockholders and of the Board of Directors. By virtue of his office he shall be a member of the Finance Committee. Subject to the Board of Directors and the Finance Committee, he shall have general charge of the business of the corporation relating to manufacturing, mining and transportation and general operation. He shall keep the Board of Directors and the Finance Committee and the Chairman of the Board and the Chairman of the Finance Committee fully informed, and shall freely consult them concerning the business of the corporation in his charge. He may sign and execute all authorized bonds, contracts, checks or other obligations in the name of the corporation, and with the treasurer or an assistant treasurer may sign all certificates of the shares in the capital stock of the corporation.

He shall do and perform such other duties as from time to time may be assigned to him by the Board of Directors.

Section 4. *Vice-Presidents.* The Board of Directors may appoint a vice-president or more than one vice-president. Each vice-president shall have such powers, and shall perform such duties, as may be assigned to him by the Board of Directors or the Finance Committee.

Section 5. *The General Counsel.* The general counsel shall be the chief consulting officer of the Company in all legal matters, and subject to the Board of Directors and the Finance Committee, shall have general control of all matters of legal import concerning the Company.

Section 6. *Powers and Duties of Treasurer.* The treasurer shall have custody of all the funds and securities of the Company which may have come into his hands; when necessary or proper he shall endorse on behalf of the Company, for collection, checks, notes and other obligations, and shall deposit the same to the credit of the Company in such bank or banks or depositary as the Board of Directors or the Finance Committee may designate; he shall sign all receipts and vouchers for payments made to the Company; jointly with such other officer as may be designated by the Finance Committee, he shall sign all checks made by the Company, and shall pay out and dispose of the same under the direction of the Board or of the Finance Committee; he shall sign with the president, or such other person or persons as may be designated for the purpose by the Board of Directors or the Finance Committee, all bills of exchange and promissory notes of the Company; he may sign, with the president or a vice-president, all certificates of shares in the capital stock; whenever required by the Board of Directors or by the Finance Committee, he shall render a statement of his cash account; he shall enter regularly, in books of the Company to be kept by him for the purpose, full and accurate account of all moneys received and paid by him on account of the Company; he shall, at all reasonable times, exhibit his books and accounts to any director of the Company upon application at the office of the Company during business hours; and he shall perform all acts incident to the

position of treasurer, subject to the control of the Board of Directors or of the Finance Committee.

He shall give a bond for the faithful discharge of his duties in such sum as the Board of Directors or the Finance Committee may require.

Section 7. *Assistant Treasurers.* The Board of Directors or the Finance Committee may appoint an assistant treasurer or more than one assistant treasurer. Each assistant treasurer shall have such powers and shall perform such duties as may be as signed to him by the Board of Directors, or by the Finance Committee.

Section 8. *Powers and Duties of Secretary.* The secretary shall keep the minutes of all meetings of the Board of Directors, and the minutes of all meetings of the stockholders, and also (unless otherwise directed by the Finance Committee) the minutes of all committees, in books provided for that purpose; he shall attend to the giving and serving of all notices of the Company; he may sign with the president in the name of the Company, all contracts authorized by the Board of Directors or by the Finance Committee, and, when so ordered by the Board of Directors or the Finance Committee, he shall affix the seal of the Company thereto; he shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the Board of Directors or the Finance Committee may direct, all of which shall, at all reasonable times, be open to the examination of any director, upon application at the office of the Company during business hours; and he shall in general perform all the duties incident to the office of secretary, subject to the control of the Board of Directors and of the Finance Committee. The offices of secretary and of treasurer may be held by one and the same person.

Section 9. *Assistant Secretaries.* The Board of Directors or the Finance Committee may appoint one assistant secretary or more than one assistant secretary. Each assistant secretary shall have such powers and shall perform such duties as may be assigned to him by the Board of Directors or by the Finance Committee.

Section 10. *Comptroller.* The Comptroller shall be the principal officer in charge of the accounts of the Company, and shall perform such duties as from time to time may be assigned to him by the Board of Directors or the Finance Committee.

Section 11. *Voting upon Stocks.* Unless otherwise ordered by the Board of Directors or by the Finance Committee, the chairman of the Board or the chairman of the Finance Committee shall have full power and authority in behalf of the Company to attend and to act and to vote at any meetings of stockholders of any corporation in which the Company may hold stock, and at any such meeting shall possess and may exercise any and all the rights and powers incident to the ownership of such stock, and which, as the owner thereof, the Company might have possessed and exercised if present. The Board of Directors or the Finance Committee, by resolution, from time to time, may confer like powers upon any other person or persons.

ARTICLE V.—CAPITAL STOCK—SEAL

Section 1. *Certificates of Shares.* The certificates for shares of the capital stock of the Company shall be in such form, not inconsistent with the certificate of incorporation, as shall be prepared or be approved by the Board of Directors. The certificates shall be signed by the president or a vice-president, and also by the treasurer or an assistant treasurer.

All certificates shall be consecutively numbered. The name of the person owning the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the Company's books.

No certificate shall be valid unless it is signed by the president or a vice-president, and by the treasurer or an assistant treasurer.

All certificates surrendered to the Company shall be canceled, and no new certificate shall be issued until the former certificate for the same number of shares of the same class shall have been surrendered and canceled.

Section 2. *Transfer of Shares.* Shares in the capital stock of the Company shall be transferred only on the books of the Company by the holder thereof in person, or by his attorney,

upon surrender and cancellation of certificates for a like number of shares.

Section 3. *Regulations.* The Board of Directors, and the Finance Committee also, shall have power and authority to make all such rules and regulations as respectively they may deem expedient, concerning the issue, transfer and registration of certificates for shares of the capital stock of the Company.

The Board of Directors or the Finance Committee may appoint a transfer agent and a registrar of transfers, and may require all stock certificates to bear the signature of such transfer agent and of such registrar of transfers.

Section 4. *Closing of Transfer Books.* The stock transfer books shall be closed for the meetings of the stockholders, and for the payment of dividends, during such periods as from time to time may be fixed by the Board of Directors or by the Finance Committee, and during such periods no stock shall be transferable.

Section 5. *Dividends.* The Board of Directors may declare dividends from the surplus or from the net profits of the Company.

The dates for the declaration of dividends upon the preferred stock and upon the common stock of the Company shall be the days by these By-Laws fixed for the regular monthly meetings of the Board of Directors in the months of April, July, October and January in each year, on which days, the Board of Directors in its discretion shall declare what, if any, dividends shall be declared upon the preferred stock and the common stock, or either of such stocks.

The dividends upon the preferred stock, if declared, severally and respectively, shall be payable quarterly upon the day preceding the last day of May, of August, of November, and of February in each year.

The dividends upon the common stock, if declared, severally and respectively, shall be payable quarterly on the day preceding the last day of June, of September, of December and of March in each year.

If the date herein appointed for the payment of any dividend shall in any year fall upon a legal holiday, then the dividend pay-

able on such date shall be paid on the next preceding day not a legal holiday.

Section 6. *Working Capital.* The directors shall not be required in January in each year, after reserving over and above its capital stock paid in, as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, to declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand; but the Board of Directors may fix a sum which may be set aside or reserved, over and above the Company's capital paid in, as a working capital for the Company, and from time to time they may increase, diminish and vary the same in their absolute judgment and discretion.

Section 7. *Corporate Seal.* The Board of Directors shall provide a suitable seal, containing the name of the Company, which seal shall be in charge of the secretary. If and when so directed by the Board of Directors or by the Finance Committee, a duplicate of the seal may be kept and be used by the treasurer or by any assistant secretary or assistant treasurer.

ARTICLE VI.—AMENDMENTS

Section 1. The Board of Directors shall have power to make, amend and repeal the By-Laws of the Company, by vote of a majority of all of the directors, at any regular or special meeting of the Board, *provided* that notice of intention to make, amend or repeal the By-Laws in whole or in part shall have been given at the next preceding meeting; or without any such notice, by a vote of two-thirds of all the directors.

FORM 11

Simple Subscription List

SUBSCRIPTION LIST

A B C Mercantile Company

A corporation to be organized under the laws of the state of Illinois for conducting a general merchandise business in the city of Chicago

Capital Stock $200,000
Shares $100 each

We, the undersigned, hereby severally subscribe at par value thereof for the number of shares of the capital stock of the A B C Mercantile Company set opposite our respective names, and agree to pay for the same in cash on demand of its Treasurer so soon as the company is organized.

Chicago, Illinois, December 1, 1915

Names	Addresses	Shares	Amount
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Such subscriptions may be revoked at the will of the subscribers at any time before the company is actually organized. In order to avoid the possibility of revocation, many subscription lists provide for the appointment of trustees to act as the other party to the subscription agreement. When the corporation is organized, it takes the place of the trustees and the contract then exists between the subscribers and the corporation. When such a trust agreement is included in the subscription list, it should include a clause similar to this:

We, the undersigned, hereby agree with the U. S. Trust Company as trustees for the incorporation of the A B C Mercantile Company, and do hereby severally subscribe for the number of shares of the stock of said company set opposite our

respective signatures, and agree to pay the value thereof as follows: 10 per cent on demand to the U. S. Trust Company as trustees for the said company and the remainder to the treasurer of the company on demand after the incorporation of said company.

Other agreements and clauses may be included in the subscription agreement, such as provisions for installment payments, donations of full paid and non-assessable shares of common stock as a bonus to subscriptions of preferred stock, fixing of a time limit by which the proposed company must be organized, and similar provisions.

A stock subscription agreement may be executed in separate instruments with the same force and effect as if all the signatures thereto were affixed to a single instrument. When subscriptions are to be secured from parties widely scattered, it is often desirable to use an individual subscription blank. The preceding form may easily be modified for this purpose.

FORM 12

SUBSCRIPTION BLANK FOR USE AFTER ORGANIZATION

SUBSCRIPTION BLANK
A B C Mercantile Company
Chicago, Illinois

Capital Stock $200,000
Shares $100 each

Enclosed find certified check for ..... dollars, payment for ..... shares of the full paid and non-assessable stock of the A B C Mercantile Company, to be issued in the name and mailed to the address given below.

Dated .....

.....
.....
.....

All applications are subject to acceptance by the A B C Mercantile Company.

FORM 13

INSTALLMENT SCRIP

No. ..... Shares ..... $.....

INSTALLMENT SCRIP

A B C Mercantile Company
Chicago, Illinois

THIS IS TO CERTIFY that ....., a subscriber for ..... shares of the capital stock of the A B C Mercantile Company at its par value of $100 per share, has paid into the treasury of the company, on account of said subscription and in accordance with its terms, the sum of ..... dollars, the ..... installment of ..... per cent each upon his subscription.

Upon payment of all the installments of said subscription and surrender of all outstanding installment scrip certificates, full paid certificates for said ..... shares of stock will be issued to the order of said subscriber.

.....
President

.....
Secretary

Chicago, Illinois
....., 19..

FORM 14

INSTALLMENT NOTICE FOR SUBSCRIPTIONS PAYABLE ON DEMAND

INSTALLMENT NOTICE

A B C Mercantile Company
Chicago, Illinois

Dear Sir:

You are hereby notified that by resolution of the Board of Directors an installment of ..... per cent on subscriptions for the stock of this company has been called to be paid to the

treasurer of the company on or before the ..... day of ....., 19...

.....
Treasurer

Chicago, Illinois, ..., 19..
Shares subscribed .....
Amount of assessment $.....

FORM 15

First Meeting of Stockholders

CALL AND WAIVER OF NOTICE

FIRST MEETING OF STOCKHOLDERS

We, the undersigned, all the incorporators and stockholders of the A B C Mercantile Company, do hereby call the first meeting of its stockholders in the office of the company at ..... Street, Chicago, Illinois, at ..... o'clock ..... on the ..... day of ....., 19.., for the organization of the company and the transaction of all such other business as may be incident thereto, and we hereby waive all requirements as to notice of such meetings and consent to the transaction thereat of any and all business pertaining to the affairs of the company.

Chicago, Illinois, ..., 19..

(Signatures) .....
.....
.....

This form may easily be modified for a call of the first meeting of the directors. These calls and waivers are used where the charter itself or the statutes of the state do not provide for the first meeting of the stockholders or directors. Until the company is organized through its board of directors and officers, it has no mechanism by which to transact its business. In Illinois this condition

is partially corrected by authorizing the petitioners to act as commissioners for carrying on the necessary business until the first meeting of the stockholders and the election of directors.

FORM 16

PRESIDENT'S CALL FOR SPECIAL MEETING OF STOCKHOLDERS

A B C Mercantile Company
Chicago, Illinois

Mr. ....., Secretary A B C Mercantile Company.

You are hereby authorized and instructed to notify the stockholders of this company that a special meeting of the stockholders has been called by me to be held in the office of the Company ....., Chicago, Illinois, on the ..... day of ....., 19.., at ..... o'clock ....., for the purpose of considering and acting upon the proposition of .....
.....
.....,
and all business in connection therewith that may properly come before said meeting.

....., 19..

.....
President

This form may easily be modified for notice of special meetings of directors. Where the stockholders or directors can easily get together, special meetings are frequently held upon call and waiver. The call is then signed by the stockholders or directors who agree to waive all statutory and by-law requirements as to notice of time, place, and purposes of such meetings. Where such special meetings are irregularly assembled on call and waiver, they are usually termed "consent meetings." By unanimous consent, the statutes in most states authorize such meetings.

FORM 17

NOTICE OF ANNUAL MEETINGS

A B C Mercantile Company
Chicago, Illinois

Dear Sir:

You are hereby notified that the annual meeting of the stockholders of the A B C Mercantile Company will be held at the office of the company, ..., Chicago, Illinois, on ....., 19.., at ..... o'clock ....., for the election of directors for the ensuing year and for the transaction of such other business as may come before the meeting.

The stock transfer books of the company will be closed at the close of business on ....., 19.., and remain closed until the opening of business on ....., 19...

Respectfully,

.....

....., 19.. Secretary.

This form of notice may easily be modified for special stockholders' meetings and for the regular and special directors' meetings. It may also be readily adapted for a publication notice.

FORM 18

SECRETARY'S LIST OF STOCKHOLDERS

A B C Mercantile Company
Chicago, Illinois

LIST OF STOCKHOLDERS

....., 19..

Name	Shares Owned	Not Present	Present in Person	Present by Proxy	Name of Proxy
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

Secretaries will find this a convenient form in which to classify the information necessary to determine what stockholders are entitled to vote at the meetings of the stockholders and by what authority the shares are to be voted.

FORM 19

BALLOT FOR STOCKHOLDERS' MEETING

A B C Mercantile Company

STOCKHOLDERS' ANNUAL MEETING
JANUARY 23, 1915

BALLOT

I hereby vote ..... shares for the following persons for Director, votes to be distributed as indicated.

.... Votes
.... Votes
.... Votes

..... Shares as owner
..... Shares as holder of proxies.

NOTE: Each share is entitled to three votes.

(SIGNED) .....

FORM 20

OATH OF INSPECTORS OF ELECTION

State of Illinois, County of Cook, ss:

We, the undersigned, duly appointed to act as inspectors of election at the annual meeting of stockholders of the ..... Company to be held in the office of the company, No. ..... Street, in the city of Chicago, on the ..... day of ....., 19.., being severally sworn, depose and say, and each for himself deposes and says, that he will faithfully execute the duties of inspector of election at such meeting with strict impartiality and according to the best of his ability.

JOHN DOE.
JOHN SMITH.

Subscribed and severally sworn to before me this ..... day of ....., 19...

HENRY WHITE,
Notary Public.

(Notarial Seal)

FORM 21

INSPECTORS' CERTIFICATE OF ELECTION

The undersigned inspectors of election, duly appointed and qualified, do hereby certify that at the regular annual meeting of stockholders of the ..... Company, held at the office of said company, No. ..... Street, Chicago, on the ..... day of ....., 19.., a quorum being present, we, after being first duly sworn by oath hereto annexed, did conduct the election for directors of said corporation, and that the vote taken thereat resulted in the election, by the plurality set opposite their respective names, of the following directors to serve for the ensuing year.

Names	Votes Received
John Peterson	125
William Jones	108
Carl Nelson	117

Witness our hands this ..... day of ....., 19...

JOHN DOE,
JOHN SMITH.

State of Illinois, County of Cook, ss:

Before me, a notary public, on this ..... day of ....., 19.., personally appeared John Doe and John Smith, to me well known to be persons described in and who executed the foregoing certificate, and severally acknowledged that they executed the same for the uses and purposes therein set forth.

HENRY WHITE,
Notary Public for County of Cook.

(Notarial Seal)

FORM 22

NOTICE OF ELECTION AS DIRECTOR

A B C Mercantile Company
Chicago, Illinois

Dear Sir:

You are hereby notified that at the annual meeting of the A B C Mercantile Company held on ....., 19.., you were elected a member of its Board of Directors.

The next regular meeting of the Board will be held in the office of the Company ....., ..., at ..... o'clock ....., for the election of officers and for the transaction of such other business as may come before the meeting.

You are requested to be present and take part in that meeting.

Respectfully,

.....
Secretary.

FORM 23

A RESIGNATION

TO THE BOARD OF DIRECTORS OF THE A B C MERCANTILE COMPANY

Gentlemen:

On account of removal from the state, I hereby resign my position as a Director of the A B C Mercantile Company, such resignation to be effective March 1, 1915.

Respectfully,

.....

Chicago, Illinois, Jan. 30, 1915.

FORM 24

PROXY

Know all men by these presents, That I ....., of ....., in the state of ....., a stockholder in the ..... Company, do hereby appoint ....., of ....., in the state of ....., to be my attorney, agent, and proxy with power of substitution to vote at the.....

..... election of the ..... Company to be held at the office of said corporation at ....., ..., on the ..... day of ....., 19.., and at any and all adjournments thereof as fully as I might or could were I personally present.

In witness thereof, I have hereunto set my hand and seal this ..... day of ....., 19...

..... (Seal)

Witness:

.....

This proxy may be modified by limiting the right to vote to definite propositions, by instructing definitely upon certain propositions, by making it unlimited as to time so that it would cease only by a specific act of revocation, or any other conditions which the grantor may wish to include. In some states the unlimited proxy is, however, forbidden by law. New Jersey, for example, provides that "no proxy shall be voted on after three years from its date."

FORM 25

Dividend Notice

UNITED STATES STEEL CORPORATION

New York, September 29, 1914.

On July 28, 1914, the Directors declared a dividend of 1¼ per cent on the common stock, for the quarter ending June 30, 1914, being dividend No. 43, payable this day to stockholders of record September 1, 1914.

In accordance with permanent order on file, enclosed please find check for amount due as above on the common stock standing in your name.

No acknowledgment is necessary.

Please notify the Stock Transfer Department, 71 Broadway, New York, of any change in your address, giving your old address as well as the new.

Richard Trimble,
Treasurer.

FORM 26

Certificate of Preferred Stock

7 PER CENT CUMULATIVE PREFERRED STOCK

NUMBER ..... SHARES .....

Incorporated under the laws of the state of New Jersey

UNITED STATES STEEL CORPORATION

This is to certify that ..... is the owner of ..... full paid and non-assessable shares of the par value of one hundred dollars each, in the PREFERRED CAPITAL STOCK of United States Steel Corporation, transferable only in person or by attorney upon the books of said Corporation, upon surrender of this certificate. The holders of the preferred stock shall be entitled to receive, when and as declared, from the surplus or net profits of the Corporation, yearly dividends at the rate of seven per centum per annum, and no more, payable quarterly on dates to be fixed by the by-laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart; so that, if in any year dividends amounting to seven per cent shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock. Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly installments for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years and such accrued quarterly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits. In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the Corporation, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon, before any amount shall be paid to the holders

of the common stock; and after the payment to the holders of the preferred stock of its par value, and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares. The preferred stock and the common stock may be increased as provided in the Certificate of Incorporation. This certificate is not valid without the signatures of the Transfer Agent and Registrar of Transfers. WITNESS the signatures of the President, or of a Vice-President, and of the Treasurer or of an Assistant Treasurer, of said Corporation

....

ASS'T TREASURER VICE-PRESIDENT

Registered: ....

NEW YORK SECURITY TRUST CO., Registrar, HUDSON TRUST CO., Transfer Agent,

By ..... By .....

ASS'T SECRETARY ASS'T SECRETARY

SHARES $100 EACH

FORM 27

CERTIFICATE OF COMMON STOCK

Incorporated under the laws of the state of Illinois

A B C Mercantile Company

Capital Stock $500,000

Preferred Stock $250,000 Common Stock $250,000

Par Value $100

This is to certify that ..... is the owner of ..... shares, of the common capital stock of this company, full paid and non-assessable, and transferable only on the books of the company by the holder thereof, in person or by duly authorized attorney, upon surrender of this certificate properly endorsed.

The rights and privileges of the holders of preferred and common stock of this company are determined by certain resolutions

printed upon the back hereof which are a part and parcel of this certificate as fully as if incorporated herein.

Witness the seal of the company and the signatures of its President and Treasurer this ..... day of ....., 19...

.....
President

(Seal)

.....
Treasurer

The above form of common stock certificate is very simple upon its face and by means of the printed matter upon the back of the certificate, it is possible to give very full explanations of the rights of different stockholders without making the face of the stock certificate seem unduly heavy.

FORM 28

STOCK CERTIFICATE STUB

Certificate number .....
For ..... shares
Issued to .....
.....
Dated ....., 19..
Transferred from .....
.....
Dated ....., 19..

Issued against original certificate number ..... for .... shares.

Received certificate number ..... for ..... shares this ..... day of ....., 19...

.....

FORM 29

FORM FOR ASSIGNMENT OF STOCK ON THE BACK OF THE UNITED STATES STEEL CORPORATION PREFERRED STOCK CERTIFICATE

For value received ..... hereby sell, assign, and transfer unto .....
..... shares of the Capital Stock represented by the within Certificate and do hereby irrevocably constitute and appoint .....
..... Attorney to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated ....., 19..

.....

In Presence of

.....

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATEVER.

This form of assignment slightly modified may be used in assigning in whole or in part any other contract, right, or property, unless expressly prohibited by competent authority. Stock subscriptions, installment receipts, and similar documents may be assigned.

FORM 30

RESOLUTION DECLARING A DIVIDEND

RESOLVED, That the sum of fifty thousand ($50,000) dollars be and hereby is appropriated and set aside from the surplus profits of this company for the payment of a two (2) per cent quarterly dividend upon its outstanding stock, said dividend to be due and payable on the ..... day of ....., 19.., to stockholders of record on the books of the company at the close of business on the ..... day of ....., 19.., and that the

Treasurer of this company be hereby authorized and instructed to give due notice of such dividend and to pay the same when due.

This form of resolution would need to be slightly modified in case both preferred and common stock were outstanding. Resolutions are used for securing action upon all the more important matters at the stockholders' or directors' meetings. They should usually be submitted in writing. Less formal matters are disposed of by motion. Motions are seldom submitted in writing. Still less important matters, but obviously proper, may be disposed of by simple direction of the president and in the absence of objections may be taken as the action of the meeting.

FORM 31

CERTIFICATION OF RESOLUTION

The undersigned, Secretary of the A B C Mercantile Company, does hereby certify that the foregoing resolution was duly adopted on the ..... day of ....., 19.., at a regularly called and duly constituted meeting of the Board of Directors of said company.

Witness my hand and seal of said corporation this ..... day of ....., 19...

.....

(Corporate Seal) Secretary

Certifications are frequently required in corporate procedure. They are never made in the name of the corporation, but in the names of the officers directly interested and concerned. The foregoing form may be modified to certify to other transactions of the company.

FORM 32

REORGANIZATION CERTIFICATE [5]

This is to certify that Richard Roe, of Chicago, Illinois, (hereinafter designated as the transferer) has transferred and de-

[5] Frank's *Science of Organization and Business Development.*

livered to William Smith (hereinafter designated as the transferee) Certificate No. 23 for 1,000 shares of the capital stock of the Doe Electrical Mfg. Co., for the purposes and upon the conditions following, viz.:

First, that the transfer above named is made to enable the said transferee to effect a reorganization of the said company, by reincorporating the same under the laws of the state of Illinois; said Illinois corporation to be known by the same or similar name as the present organization, and to have a capital stock of $125,000; that the new corporation, when formed, shall have $10,000 in cash paid in its treasury, after all obligations of the present company are discharged; and also to have in its treasury $15,000—face value—of its capital stock for sale, at par; that said corporation, when reorganized by said transferee, shall possess and own by transfer from the Board of Directors of the present corporation all the assets thereof.

Second, that the said transferee agrees to deliver, and the said transferer agrees to receive, in lieu of said stock certificate, a new certificate in the said reorganized company, for 50 shares of its capital stock at the par value of $10 per share, fully paid and non-assessable.

Third, it is further understood that this agreement is made, and the said reorganization is contemplated, for the purpose of discharging the obligations of the said The Doe Electrical Mfg. Co., and to preserve its assets for the benefit of all its stockholders, equally, and that to accomplish said objects the said transferee is hereby vested with all the powers and rights of ownership, in and to the said stock so transferred, and with full power to consummate said reorganization in accordance herewith.

Fourth, it is further agreed that the said transferee shall perfect said reorganization, as soon as may be after all the outstanding stock in the present corporation is transferred and surrendered under the terms of this certificate; that upon his failure or inability so to do, within a reasonable time, he shall redeliver and transfer said certificate to the said transferer.

In Testimony Whereof, the said parties hereto have hereunto

set their hands and affixed their seals, at Chicago, Illinois, this fourth day of May, A. D., 1907.

RICHARD ROE (Seal)
WILLIAM SMITH (Seal)

FORM 33

CERTIFICATE OF DISSOLUTION

CERTIFICATE OF DISSOLUTION ISSUED BY SECRETARY OF STATE

State of New Jersey
Department of State
Certificate of Dissolution

To All to Whom These Presents May Come, Greeting:

Whereas, It appears to my satisfaction by duly authenticated record of the proceedings for the voluntary dissolution thereof by the unanimous consent of all the stockholders, deposited in my office, that the ..... Company, a corporation of this state, whose principal office is situated at No. ..... Street, in the city of ....., county of ....., state of New Jersey (..... being the agent therein and in charge thereof upon whom process may be served), has complied with the requirements of "An Act Concerning Corporations (Revision of 1896)," preliminary to the issuing of this

CERTIFICATE OF DISSOLUTION

Now, therefore, I, ... Secretary of State of the state of New Jersey, do hereby certify that the said corporation did, on the ..... day of ....., 19.., file in my office a duly executed and attested consent in writing to the dissolution of said corporation executed by all the stockholders thereof, which said consent, and the record of the proceedings aforesaid are now on file in my said office as provided by law.

In Testimony Whereof, I have hereto set my hand and affixed my official seal at Trenton, this ..... day of ..... A. D., 19...

(L. S.) Secretary of State.

INDEX